



Bureau of Justice Statistics

National Conference on Sex Offender Registries

Proceedings of a BJS/SEARCH conference

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Bureau of Justice Statistics**

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Foreword

Americans have become increasingly angry in recent years in response to a series of violent and highly publicized sexual assaults, primarily against children, committed by individuals with extensive prior sexual offense histories. This outrage has been intensified by the perception, justified or not, that systems traditionally used by justice agencies to monitor law-breakers returned to the community do not adequately protect the public from that unique category of individual known as the sex offender.

Seeking to address the public's concern, the U.S. Congress established three statutes that collectively require States to strengthen the procedures they use to keep track of sex offenders: the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (enacted in 1994), the Federal version of "Megan's Law" (enacted in 1996), and the Pam Lychner Sexual Offender Tracking and Identification Act (also enacted in 1996).

In brief, the statutes require States to establish registration programs so local law enforcement will know the whereabouts of sex offenders released into their jurisdictions, and notification programs so the public can be warned about sex offenders living in the community. (The Lychner Act also requires the creation of a national sex offender registry, and it requires the FBI to handle registration in States that lack "minimally sufficient" programs.)

The States were assigned a difficult task. They were given until September 1997 to comply with the Wetterling Act and Megan's Law, and until October 1999 to comply with the Lychner Act. Those that failed to meet the compliance

deadlines risked losing 10 percent of their appropriation from the Federal Edward Byrne Memorial State and Local Law Enforcement Assistance Program, which provides funding for State and local crime eradication efforts.

Compliance was complicated by the fact that both Megan's Law and the Lychner Act amended portions of the Wetterling Act, creating confusion as to whether the requirements of one statute superceded those of another. There were also questions as to whether the registration and notification programs, once implemented, would survive constitutional challenges based on claims of excessive punishment, invasion of privacy and denial of due process. Another hurdle was the growing number of individuals who fell under the statutes' requirements. According to data compiled by the Bureau of Justice Statistics, the number of sex offenders jumped 300 percent between 1980 and 1994. In 1994, there were approximately 234,000 sex offenders under the care, custody or control of corrections agencies — 60 percent under conditional supervision in the community — on any given day.

States experiencing difficulty meeting the compliance deadlines were given the opportunity to request 2-year, "good-faith-effort" extensions. Forty-two of the 56 States and territories required to comply with the statutes requested deadline extensions. It appeared the States needed guidance and clarification to help them comply with the registration and notification statutes.

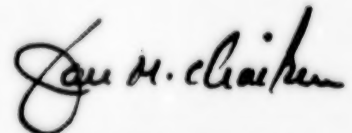
To assist the States, the Bureau of Justice Statistics, along with SEARCH, The National Consortium for Justice Information and Statistics, cosponsored the

National Conference on Sex Offender Registries, held July 16-17, 1997, in Bellevue, Washington. This publication presents the proceedings of that 2-day conference.

The conference featured presentations by Federal officials who explained the requirements of the registration and notification statutes in detail and who answered the questions of State representatives. Representatives from several States presented information on programs that their States had implemented in response to the Federal requirements. Elected officials provided a legislative perspective to the proceedings, and experts updated participants on the status of legal challenges to registration and notification programs.

Many of the problems and issue areas identified in these proceedings were subsequently addressed or ameliorated in Federal legislation and regulations.

The issue of sex offending is as sensitive and emotionally charged as any faced by society. The federally required programs are relatively new or redesigned approaches to controlling sex offenders, and a period of time must elapse before quantitative study can be conducted to ascertain whether they are effective. I hope these proceedings serve during this period as a valuable reference tool and also as a contribution to the ongoing debate over the methods used to control sex offenders.



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Introduction

In October 1989, 11-year-old Jacob Wetterling bicycled with his brother and a friend to a store near his St. Joseph, Minnesota, home to rent a video. Ten months later, Houston real estate agent Pam Lychner prepared to show a vacant residence to a prospective buyer. In July 1994, Megan Kanka, age 7, accepted an invitation from a neighbor in Hamilton Township, New Jersey, to see his new puppy. As they went about their daily routines, Wetterling, Lychner and Kanka could not have known they were fated to become crime victims, or that their names would ultimately become synonymous with Federal laws mandating more stringent control of sex offenders.

Wetterling's ride home was interrupted by an armed man wearing a nylon mask who ordered the boy's companions to flee. Wetterling has not been seen since. Investigators later learned that, unbeknownst to local law enforcement, halfway houses in St. Joseph housed sex offenders after their release from prison. Wetterling's disappearance transformed his mother, Patty, a self-described "stay-at-home mom," into a tireless advocate for missing children. She was appointed to a governor's task force that recommended stronger sex offender registration requirements in Minnesota.

The more stringent requirements were subsequently implemented on a national basis when the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was included in the Federal Violent Crime Control and Law Enforcement Act of 1994.¹ The Wetterling Act required States to

establish stringent registration programs for sex offenders — including life-long registration for a subclass of offenders classified as sexual predators — by September 1997.

Awaiting Lychner at the vacant house was a twice-convicted felon who brutally assaulted the former flight attendant. Her life was saved when her husband arrived on the scene and interrupted the attack. The experience motivated Lychner to form Justice for All, a Texas-based victims' rights advocacy group that lobbies for tougher sentences for violent criminals.

U.S. Senators Phil Gramm of Texas and Joseph Biden of Delaware credited Lychner with helping to craft the language of a bill that established a national computer database to track sex offenders. The bill was named the Pam Lychner Sexual Offender Tracking and Identification Act of 1996² to honor the activist after she and her two daughters were killed in the explosion of TWA Flight 800 off the coast of Long Island, New York, in July 1996. The Lychner Act amended the Violent Crime Control and Law Enforcement Act of 1994 to require the Federal Bureau of Investigation to establish the national offender database and to handle sex offender registration and notification in States unable to maintain "minimally sufficient" programs of their own. The Lychner Act compliance deadline is October 1999.

The neighbor who invited Megan Kanka to see his puppy was a twice-convicted pedophile who raped and murdered her, then dumped her body in a nearby park. Megan's grieving parents said they never would have let their daughter

travel their neighborhood freely if they had been alerted to the presence of a convicted sex offender living across the street from their residence. Congress passed the Federal version of "Megan's Law," another amendment to the Violent Crime Control and Law Enforcement Act of 1994, in 1996.³ It required States to establish some form of community notification by September 1997.

The process of instituting a nationally consistent policy to control sex offenders is complex. One of the greatest challenges is the sheer magnitude of the problem. Recent figures show that, nationally, approximately 234,000 sex offenders are under the care, custody or control of corrections agencies — 60 percent under conditional supervision in the community — on any given day.

The FBI, directed by the Lychner Act to register sex offenders and to notify communities in States lacking "minimally sufficient" programs, used fugitive statistics from four California field divisions (San Diego, Los Angeles, San Francisco and Sacramento) and information on noncompliant sex offenders from the State's Department of Justice to study the assignment's impact on its resources. The study found that, if the FBI were made responsible for administering California's program, every agent working in the four divisions at the time of the study would have to be assigned full-time just to track down sex offenders who failed to register as required.

There are thorny legal issues to consider as well. Individuals subject to registration and

¹ 42 U.S.C. § 14071.

² 42 U.S.C. § 14072.

³ 104 P.L. 145, 100 Stat. 1345.

notification programs have challenged the statutes on constitutional grounds, citing excessive punishment, lack of due process and invasion of privacy. The courts have generally upheld registration requirements, but several courts have struck down notification programs. Many observers believe the notification controversy will not be resolved until the U.S. Supreme Court settles the matter.

Designing an effective sex offender registration and notification program that can withstand legal challenges while meeting the needs of the community is difficult, especially within the relatively short time periods for compliance spelled out in the Federal statutes. States that failed to meet the statutes' compliance deadlines risked losing 10 percent of their appropriation from the Federal Edward Byrne Memorial State and Local Law Enforcement Assistance Program, which provides funding for State and local crime eradication efforts. The statutes allowed States experiencing difficulty in establishing programs to apply for a 2-year, "good-faith-effort" deadline extension. Forty-two of the 56 States and territories covered by the statutes sought the extensions.

To help States design constitutionally viable programs that meet Federal mandates, and to contribute to the national debate over the issue of controlling sex offenders, the Bureau of Justice Statistics (BJS), U.S. Department of Justice, and SEARCH, The National Consortium for Justice Information and Statistics, cosponsored the *National Conference on Sex Offender Registries*, held in Bellevue, Washington, on July 16-17, 1997. The conference sought to provide the States with tools needed to implement effective registration

and notification programs, and also to provide a forum where representatives from a number of States could exchange ideas and compare experiences. Speakers educated State representatives on the requirements of the sex offender-related Federal statutes, updated participants on new legislation and legal challenges to the current statutes, and provided as examples programs that several States implemented in response to the Federal mandates.

Presenters included officials from the U.S. Department of Justice and the FBI, representatives from State and national criminal justice organizations, and State legislators and other State-level officials. Mrs. Patty Wetterling provided the keynote address. This document presents the proceedings of that conference. (Sex offenders are referred to in the male gender throughout these proceedings, as more than 99 percent of convicted sex offenders are men.)

Day One of the conference focused primarily on the sex offender problem from a Federal perspective. A panel of U.S. Justice Department officials discussed various aspects of the Federal statutes and conducted an informative question-and-answer session to address the specific concerns of individual States. Day Two began with a presentation by FBI representatives concerning preparations the Bureau is taking to assume control of registration and notification functions in States unable to establish their own effective programs.

The agenda then moved to a State perspective. Representatives from several States explained procedures and programs their States adopted in response to the Federal mandates. State and local elected officials enlightened conference participants on the legislative response to public demands for action. The conference

concluded with an overview of the various notification options available to States, from passive (where the public seeks out information) to aggressive (where the offender is required to notify neighbors of his presence).

Mrs. Patty Wetterling, advocate for missing children and cofounder of the Jacob Wetterling Foundation, delivered the conference's "Keynote address," in which she related the details of her son's abduction and the emotional highs and lows that accompanied the aftermath. She discussed the creation of the Jacob Wetterling Foundation, which aids in the search for missing children, and also the concern for individual rights elected officials expressed when a task force of which Mrs. Wetterling was a member recommended stringent registration requirements for convicted sex offenders.

The next speaker, BJS Director Dr. Jan M. Chaiken, discussed the general topic of the "Nature and management of the problem," in particular what information national data collection programs can provide on sex offenders and offending. He provided a detailed statistical overview of violent sex crimes — including murders, assaults on children, rape and the criminal histories of sex offenders — to establish a national context on which to proceed with the conference.

Dr. Chaiken reported that of the 95,000 sex offenders in State prisons, 60,000 most likely committed their violent sex crimes against children under age 18. The majority of those serving time for violent sex offenses against children committed their crimes against victims age 12 or under. He endorsed the implementation of the National Incident-Based Reporting System, which collects more detailed crime information, leading

to higher quality crime data and, ultimately, stronger laws.

Next, a panel of U.S. Justice Department officials explained compliance issues associated with the Wetterling Act and Megan's Law. The panel was comprised of Ms. Marlene Beckman, Special Counsel, Office of Justice Programs (OJP); Ms. Lisa Gursky Sorkin, Chief of Staff, Office of Policy Development; Ms. Donna Feinberg, Office of General Counsel, OJP; and Mr. James C. Swain, Director, State and Local Assistance Division, Bureau of Justice Assistance (BJA).

Ms. Beckman served as panel moderator and also provided a brief update on the States' progress in implementing registration and notification laws in response to the Federal mandates. According to Ms. Beckman, 39 States had sex offender registration programs prior to the enactment of the Jacob Wetterling Act; now, all 50 States have registration programs in place. She added that only 6 States had enacted community notification laws prior to passage of the Federal version of Megan's Law, but as of July 1997, 45 States had passed notification legislation.

Ms. Sorkin spoke next on the interrelationship between the three Federal statutes. She explained that the Jacob Wetterling Act places four major obligations on States: they must require certain offenders to register, maintain accurate registries, maintain and distribute registry information to law enforcement, and disclose information to the public when necessary for public safety. Megan's Law then amended the Wetterling Act to make community notification mandatory rather than at the discretion of law enforcement.

She added that the Pam Lychner Act added three more requirements: it obligates the FBI to establish a national database to track the

whereabouts and movements of sex offenders, it requires the FBI to handle sex offender registration in States that fail to meet the Act's definition of "minimally sufficient" systems, and it amends the Wetterling Act to make registration requirements more stringent.

In her presentation, Ms. Feinberg explained the various registration and notification methods States could implement to comply with the Federal mandates. Not all States utilize the same procedures, Ms. Feinberg said, and variations of programs can be used as long as the basics of the three statutes are met. She also explained the steps a State needs to follow to apply for a 2-year, "good-faith-effort" compliance deadline extension.

Mr. Swain elaborated on Ms. Feinberg's comments on deadline extension applications, and explained the process BJA staff would use to evaluate extension requests. Panel presentations were followed by a question-and-answer session, which provided an opportunity for individual State representatives to seek solutions for their unique problems.

Dr. Chaiken's second address — "Federal funding support for sex offender registries" — concluded Day One of the conference. He indicated that programs to improve sex offender registries would most likely be coordinated with ongoing efforts to improve criminal history records through the National Criminal History Improvement Program, which the BJS has administered since 1995. He also said that if the Federal statutes are to achieve their desired results, proper safeguards must be designed so the public receives the information it needs while restricted information is made available only to individuals authorized to view it.

Day Two of the Conference began with presentations on

"Interim and permanent solutions" by two FBI representatives: Mr. Emmet A. Rathbun, Unit Chief, Criminal Justice Information Services (CJIS) Division, and Mr. Ralph C. Thomas, Supervisory Special Agent, Policy, Planning and Analysis Unit, Criminal Investigative Division.

Mr. Rathbun spoke on the FBI's efforts to establish a National Sexual Offender Registry, indicating that the CJIS Advisory Policy Board (APB) initiated discussions in 1995 on the benefits of such a registry and began to consider where it should be housed. Since the Wetterling Act already directed States to develop offender databases, the APB decided to recommend the creation of an index at the National Crime Information Center (NCIC) listing the State database or agency that maintained the detailed registrant information. Sensing no urgency for the national registry, the APB delayed action until the implementation of NCIC 2000, Mr. Rathbun said.

He said the timetable changed when President Clinton issued a directive in June 1996 instructing the Attorney General to prepare in 2 months a plan to implement a national sexual predator and child molester registration system. The directive made it necessary for the FBI to develop an interim national registry until NCIC 2000 is delivered. He said the FBI's interim solution called for a link from the National Law Enforcement Telecommunications System (which is used to track Federal parolees and probationers) to each State's sex offender database. The FBI delivered the interim provisions for use in February 1997, he added.

Mr. Thomas spoke on the "very serious implications" of the Lychner Act provision requiring the FBI to handle sex offender registration in States that lack

"minimally sufficient" programs. He said it was difficult to measure the provision's impact as it had not yet been determined how many States needed assistance, although it appeared there were more than originally anticipated. According to Mr. Thomas, registration responsibilities, address verification, the search for non-compliant offenders and community notification placed a significant burden on FBI resources.

Ms. Elizabeth A. Pearson, Staff Associate and Congressional Liaison for the National Criminal Justice Association, spoke next, providing an overview of current State sex offender registration and notification laws. Ms. Pearson said most State programs contained these common features:

- The State maintained the registry but information is supplied by local law enforcement agencies;
- Information typically collected included the offender's name, address, photograph, birth date and social security number;
- The timeframe to register ran from immediately after release to 30 days after release;
- Most registries were updated only when an offender changed his address; and
- Most laws applied equally to offenders who were convicted in other States.

Ms. Pearson then discussed differences in State programs and reviewed the history and evolution of registration and notification laws. She said California established the first sex offender registry in 1947 and that 38 States had established registries since 1994. The State of Washington created the first notification law in 1990, Ms. Pearson said, and as of July 1997, only five States had not implemented notification procedures.

Ms. Dena T. Sacco, an attorney with the U.S. Justice Department, spoke next on litigation issues, in particular, "Arguments used to challenge notification laws — and the government's response." She said Federal registration and notification statutes were usually challenged on three constitutional claims: excessive punishment, invasion of privacy and lack of due process.

State and Federal governments countered that the laws were not designed for punishment but for community protection and that most of the information released during notification was already a matter of public record, Ms. Sacco said. Governments also argued that there were no constitutionally protected privacy interests, and that due process protections did not apply to the statutes because they did not threaten the liberty of registrants.

Ms. Sacco said several lower courts and the Kansas Supreme Court have struck down notification statutes, and she predicted that the issue may not be resolved until it is considered by the U.S. Supreme Court.

SEARCH General Counsel Robert R. Belair spoke next on the status of two pieces of legislation currently before the Congress which would clarify portions of the Wetterling Act relating to registration requirements.⁴ Mr. Belair said enactment of the legislation would enhance the flexibility of current registration requirements, extend reporting

requirements to military and Federal offenders, and improve the ability to track offenders who live in one State but work in another.

The next portion of the agenda, "Panel of the States: Systems for the registration of sex offenders," featured presentations from New York, California, Florida and Illinois officials on the sex offender registration and notification programs their States implemented in response to the Federal statutes. Mr. Floyd Epps and Ms. Kathy J. Canestrini, members of the New York State Board of Sex Offender Examiners, discussed an assessment process their program uses to estimate the risk of reoffense by offenders released into the community. Factors such as prior felony convictions, number of victims, victim age and other issues were considered by the Board when assigning a risk level of 1 to 3 to a released offender. The risk level determined the breadth of notification. As of July 1997, the Board assigned a Level 3 risk assessment — the highest level possible — to 52 percent of the 1,540 cases it reviewed. Thirty-nine percent received a Level 2 risk assessment and 9 percent received a Level 1 assessment.

Mr. Doug Smith, Chief of the Bureau of Criminal Information and Analysis for the California Department of Justice, related the history of sex offender laws in his State, which in 1947 became the first in the Nation to require offenders to register. California's version of Megan's Law was passed in September 1996, Mr. Smith said. Notification was provided by way of a CD-ROM, which listed 64,000 registered sex offenders and was available to view at 400 locations. Information will be updated four times a year, and the State adds approximately 3,000 new registrants annually. According to Mr. Smith, California also allowed police to notify

⁴ The legislation is H.R. 1683 and S. 767, both titled the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Improvement Act of 1997. The U.S. House of Representatives passed H.R. 1683 on September 23, 1997, and sent it to the Senate. The Senate, meanwhile, referred S. 767 to its Judiciary Committee on May 20, 1997.

possible at-risk individuals and the community at large when a registered sex offender was nearby.

Ms. Donna M. Uzzell, Director of Criminal Justice Information Services for the Florida Department of Law Enforcement (FDLE), discussed the history and implementation of her State's registration and notification programs. Ms. Uzzell said Florida's registration program was initiated in 1993 and was amended several times to add and expand notification features. The FDLE maintains a World Wide Web site where users can search for registered sex offenders by county, city or by the offender's last name.⁵ Florida also provides a toll-free telephone number that residents can call to determine whether any registered offenders live in their communities.⁶

Presentations by Illinois State Police officials Mr. Kirk Lonbom, Assistant Chief of the Intelligence Bureau, and Mr. Mike Welter, Chief of the Violent Crimes Section, concluded the panel on State registration and notification systems.

Mr. Lonbom said Illinois used two statewide electronic information systems to keep track of sex offenders. Mr. Welter, in turn, reported that notification was carried out in three phases:

- First, each school and child-care facility was given a list of sex offenders living in the county where the school or facility is located.
- Second, each law enforcement agency in Illinois had the discretion to provide sex offender information to any group or individual likely to encounter the offender.

- Third, any person authorized to view the sex offender registry could access on-line information at any local police department or sheriff's office.

The aggressive nature of the Illinois registration program was demonstrated by the fact that among those registered were an 86-year-old man, a quadriplegic, an individual in the Federal Witness Protection Program, and a man in a coma at the time of registration, Mr. Welter said.

King County (Washington) Prosecutor Norm Maleng provided a local perspective on controlling and prosecuting sex offenders. He said Washington State enacted the Nation's first notification law in 1990. Mr. Maleng said the law was prompted by several highly publicized sex crimes committed by individuals with long sex offense histories who received no treatment while incarcerated. Mr. Maleng discussed the importance of registration programs as an aid to investigations and related a story concerning the quick apprehension of a suspect in an attempted rape who was tracked down by officers using registry information.

In a second panel of the States, Rep. Mike Lawlor of the Connecticut General Assembly and Sen. Florence Shapiro of the Texas State Senate explained the legislative response to community pressure for action.

In a frank presentation, Rep. Lawlor revealed that the Connecticut Legislature's rush to implement sex offender programs resulted in several mistakes that took several subsequent legislative sessions to correct. He said legislators were unaware, for example, that most individuals tried for sex crimes against children in Connecticut are convicted of "risk of injury to a minor," which was left off a list created by the legislature of crimes that carried a registration requirement. He

advised elected officials to consult with a wide variety of criminal justice professionals before writing legislation to address sex offense and other crime-related problems.

Sen. Shapiro said she became involved in sex offense issues following the 1993 murder of 7-year-old Ashley Estelle, who was snatched from a playground while her parents were nearby. The murderer was a convicted sex offender released from prison shortly before the crime after serving only 17 months of a 10-year sentence. Sen. Shapiro said. She said an investigation revealed 34 specific errors made by the Texas criminal justice system in the prosecution and incarceration of the man prior to the murder of Ashley Estelle.

The incident provided Texas with three harsh lessons, Sen. Shapiro said:

1. Clear communication between agencies is critical to ensure proper monitoring of offenders as they move from one agency's responsibility to another.
2. Sound public policy is crucial to the enactment of effective laws to control sex offenders.
3. A comprehensive legislative and administrative approach that takes in all factors of sex offending is necessary to create and implement successful programs.

The conference concluded with a final panel of the States that focused on community notification and verification practices throughout the country. Panel members Ms. Roxanne Lieb, Director of the Washington State Institute of Public Policy, and Mr. Scott A. Cooper, Staff Attorney with the National Criminal Justice Association, discussed sex offender programs that various States have implemented.

Ms. Lieb also provided the results of a recent Washington

⁵ The Web address is: www.fdle.state.fl.us/.

⁶ The toll-free number is: 1-888-357-3332 (or 1-888-FL-PREDATOR).

State study that examined the impact of notification programs on the recidivism patterns of sex offenders released from incarceration. She said the study compared the rearrest rates of a group of offenders released *before* notification procedures were implemented to those of a group of offenders released *after* notification procedures were in place.

According to Ms. Lieb, the study found that the two groups committed about the same number of new sex offenses, but those who committed new offenses *after* notification procedures were in place were arrested after spending 2 to 2 1/2 years in the community compared to about 5 years for the other set of offenders.

Mr. Cooper discussed the approaches three States have taken to comply with Federal sex offender mandates. He said Alaska provides passive notification, which requires interested parties to submit information request forms and pay a \$10 fee, while Louisiana's notification law is unique in that it requires the offender to conduct his own notification to every residence or business in a one-mile radius in rural areas, or to every residence or business in a three-block area in urban areas. Louisiana courts can also require a convicted offender to put a bumper sticker on his car or wear clothing indicating that he is a convicted sex offender, although that provision of the law had not been enforced as of July 1997, Mr. Cooper said.

New Jersey, like New York, uses a risk assessment scale to determine the level of notification for released offenders, he said. Several court decisions based on constitutional challenges helped clarify New Jersey's law.

Mention and thanks are given here to Mr. Ronald P. Hawley, who ably served as conference moderator. Mr. Hawley is Assistant Director of the North Carolina Bureau of Investigation's Division of Criminal Information and is also Chair of SEARCH's Law and Policy Project Advisory Committee.

Keynote address

The Jacob Wetterling story
Patty Wetterling

Nature and management of the problem

Sex offenders and offending:
Learning more from national data collection programs
Dr. Jan M. Chaiken

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The Jacob Wetterling story

PATTY WETTERLING
Children's Rights Advocate
The Jacob Wetterling Foundation

I am truly honored to be a part of this very exciting opportunity to make the sex offender registries law better and more workable in every State. A complete stranger sent me a verse from a song called "Hope," which we have lived on for the last 7 1/2 years. It is about beginnings. I would like to start with that.

Hope is intimately tied to beginnings, of this I'm certain. You're not going to start anything without hope of a successful conclusion. Unless you hope strongly, intensely enough, you may never start at all. In any endeavor, two-thirds of the battle is won simply by taking the first step. All too often through the years I've let myself be held back by lack of confidence, fear of failure, sometimes just plain inertia or laziness. But I've learned that if you force yourself to make the first move, mighty forces will come to aid. The act of beginning starts the flow of power, but those who never begin never feel that power. Between hope and action lies a chasm deep but also narrow. It can be bridged by an act of will, a decision that says firmly, "Yes, I will take steps to make this hope a reality, and I will take the first step now." Hope, the spark that ignites the actions that make the dream come true.

We have had a dream for Jacob for 7 1/2 years. I thought it might be helpful to share with you where sex offender registry legislation came from and why it is so critical for us.

My husband and I went to a housewarming party on October 22, 1989. We called home to give the children the phone number where we were. My son, Trevor, answered the telephone and we gave him the number.

Our older daughter was not home that night. Jacob, his best friend, Aaron, and Trevor were babysitting their younger sister, Carmen. Trevor called back and said, "We're bored. There's nothing to do. Can we ride our bikes to the store and rent a video?" From our house to the video store is less than 10 minutes by bike. We live in a town of 3,000 people, but I said no. It was starting to get dark, and they had never done this before. Trevor said, "Well, let me talk to Dad." My husband, Jerry said, "If you wear my jogging vest (which is reflective) and take a flashlight, and put a white sweatshirt on Aaron, and if you go straight to the store and come straight back, it should be okay."

I truly believe it should have been okay. They called another time. I do not know if any of you are parents, but this was the third time we talked to our kids that night. "Carmen doesn't want to go," the kids said. "Is it okay if Rochelle comes over to babysit?" These were responsible kids who arranged a babysitter for their younger sister.

The next call came from a neighbor's dad who told us two of the kids came back from the store, but somebody had taken Jacob. They were biking home from the store when they looked up and saw a man with a gun standing in the road. He told the kids to get off of their bikes and to lie down in the ditch or he would shoot them. He asked their ages, which is still confusing to me. Trevor was 10 years old and Aaron and Jacob were 11 years old. The man with the gun told Trevor to run into the woods as fast as he could or he would shoot him, so Trevor took off. He said the exact same words to Aaron, and Aaron took off. But as Aaron was leaving, he saw the man grab Jacob's shoulder. When Aaron caught up to Trevor and they felt safe enough to turn around and look back, Jacob and the man were gone.

Nobody saw the man's face. He wore a mask. They did track Jacob's footsteps to where a car had been parked, so they know they left in a car. It was a generic tire track on a dusty, gravel road in October. The police have gathered little information since then; basically, we have no more than we had that very first night.

No matter what preparations you make, nothing prepares you for a high-profile investigation of a missing child case. One local television station assembled a film clip of activities during the first year Jacob was missing. The clip shows I was blessed with a sheriff who left no stone unturned. He had been a sheriff for years and years. He called in 20-year-old favors,

asking, "Can you do this for me?" He pulled in everybody.

We had our State crime bureau, the Minnesota Bureau of Criminal Apprehension (BCA), involved. The FBI became involved the first night because Jacob's classmate was the son of an FBI agent and because there was a weapon used. They knew this was an unusual case right away.

The police used all-terrain vehicles and horses to search for Jacob. Everybody in the entire Midwest was aware of his abduction. The Minnesota Vikings wanted to wear "Jacob's hope" hats at a game. The National Football League said no, so the Vikings waited for a home game and then they all wore their hats on the sidelines as Jacob's picture was projected on to the Metrodome highlight screen. The effect was phenomenal. People joined hands for Jacob. The line stretched for 5 miles. The sheriff's department told me the line would have been longer, but this happened in Minnesota in the winter. People were huddled together, shivering with cold, in many places. This huge outpouring of support is still heartening to me.

We still have no suspect. We have no proof that Jacob is not alive.

I remember a sense of helplessness in the beginning. I remember crawling into bed, pulling the covers over my head and thinking, "I can't do this. It's too hard." I had this image of Jacob laying somewhere pulling covers over his head and thinking, "I can't do this. They're never going to find me."

At that point, we made a very conscious decision that we were going to do something about this issue. I began asking questions. I was lucky enough to be a stay-at-home mom. I knew a lot about childhood things, but I knew nothing about child abduction, so I

asked a lot of questions. I still ask questions. I think one of the complicated issues is that most people are ignorant about those who violate children. We do not function in their world, which is why sex offenders continue to find victims.

When Jacob was abducted, law enforcement had no experience running a missing child investigation. Police train for all kinds of situations, but at that point, 7 years ago, there was not much training for this type of investigation.

I learned that most abductions are short-term, lasting a few hours. Most of the time, it is not a stranger who victimizes a child. The way Jacob was taken was extremely rare. Most victims get tricked or lured by someone they know. The number one reason for kidnapping is for sexual purposes. We truly have to stop the child molester if we are going to stop kidnappings.

I want to read the profile of the person who may have abducted Jacob, because I think it is key. Consider how this profile might be relevant to community notification and sex offender registration. It reads, "The following is a profile of persons who have committed crimes similar to the abduction of Jacob Wetterling. Agents assigned to the FBI Academy's Behavioral Science Unit at the National Center for the Analysis of Violent Crime compiled the profile. Construction of a criminal personality profile is predicated upon careful and objective analysis of victimology and crime-scene data coupled with behavioral possibilities arising from study and extensive research in similar cases.

"The offender is likely to be a white male between the ages of 25 to 35 years old; very low self-image; likely to have committed a similar crime in the past; may have some physical deformity; and is likely to have had a recent stressful

event in his life which would have precipitated the high-risk approach taken in this crime. The high-risk approach also indicates the offender may have attempted similar acts recently and failed. The offender is likely to be in an unskilled or semi-skilled job that does not include contact with the public. Persons who know the offender would likely notice heightened anxiety on the offender's part since the crime occurred."

"What do you need?" I asked law enforcement. "What would help you find Jacob?" The police responded, "It would have helped to know who was in the area at the time of Jacob's abduction." We found out sex offenders were being sent to our region by another county, and they were put in halfway houses. Our local law enforcement did not know these halfway houses were for sex offenders. When police went to find out who was living in the halfway houses when Jacob was taken, they were told, "We're not going to tell you. There are privacy issues to consider." You could find out who was staying at the Holiday Inn or Super 8 motels. Information on noncriminals was available, but not information on sex offenders. Well, police got the information they were looking for, and then the law was corrected because it did not make sense. A lot of the things did not make sense at the time.

There was a man arrested for burglary in St. Cloud a year and a half after Jacob's abduction. When police ran a criminal history check on him, they found he had victimized young boys in his past. He lived closer to the abduction site than we do, but police did not know about this person at the time. It would really help law enforcement to know. Just knowing who is in the area is a good tool.

This information can also be used to clear suspects right away,

rather than searching for them for years, finding out they were not involved and then having to go back to the beginning. I was appointed to a governor's task force in Minnesota to look at this problem and to suggest solutions. We did not jump into legislation right away. I did not have the knowledge at the time, and I would encourage you to avoid reactionary legislation because it is not the best way to proceed. It is not well planned.

Eventually, we came up with a proposal to have sex offender registration in Minnesota. I was appointed by a governor who lost his next election. When we went to report our findings, we had to report to a new governor. We said we wanted to have sex offender registration. He looked me straight in the eye and said, "You can't do that. These people have rights."

That was the wrong thing to say to me at the time. We got our legislation. We proceeded in Minnesota very carefully. We are not trying to violate anyone's rights. We tried to give police some tools we felt that they could use. After we got sex offender registration legislation passed in Minnesota, we went for Federal legislation. In 1996, Attorney General Janet Reno signed a proclamation to develop a system to connect all 50 State sex offender registries. Whether it is working or not, I think it is a good idea.

At the signing of the crime bill after our Federal legislation passed, we met Megan Kanka's parents. Megan, as you know, was kidnapped and murdered by someone who had committed these types of crimes before. This was not the first set of parents I met whose children were victims of crime.

Jeanna North, who was kidnapped, still has not been found. A man who was living on the corner where she was last seen who

had a history of victimizing little girls in South Dakota admitted to kidnapping and murdering Jeanna in North Dakota. He has not been charged with the crime even though he provided a full confession. He is serving 30 years in prison for victimizing two other little girls. I continually hear from these parents. If only we had known.

That statement implies that increased knowledge will lead to change. When you are out alerting the public that a sex offender is going to be released into the community, anticipate change. That is why you are spreading the information, so people can respond differently and protect their children. Not knowing is a greater risk.

How you release the information is critical. The media like to highlight cases where notification did not work or where somebody was harassed. They do not want to report on all the instances when notification worked. When letting people know that a sex offender is being released into their community, we must tell them how they should respond. We are giving them the information so they can take precautions. The media also like to play around with the word "stranger." We know stranger is a ridiculous word. I hear law enforcement using it all the time, but people do not know who a stranger is. What is a stranger? Kids do not know. One time, I was talking to a group of social workers and a little 5-year-old girl said, "Mommy, Jacob was abducted by a stranger, wasn't he?" I was impressed; 5 years old. The girl's mommy said, "Yes, he was." The little girl said, "I'm so glad we don't know any strangers." Brilliant thought — once you know them, they are not strangers anymore.

Sex offenders victimize children by gaining their trust. We are not just telling kids to beware of the

"stranger" who is moving into their community. We are denying that stranger the opportunity to befriend children so he cannot victimize them. It is so important to remember the intent of this bill. I feel we worked really hard in Minnesota so our intent was clear. Our intent is to have fewer victims. We want to prevent sex offenders released from prison from violating other children.

We are not going to make it easy for them to have innocent victims because people are going to know their style. They are going to know what these people have done in the past. Another question you need to ask is, "Who is good at talking to communities to calm them down?" People are going to be angry. They are going to ask a lot of questions.

There is a lot of concern because sex offender registries are unfunded mandates. The Minnesota registry is unfunded as well. The Minneapolis Police Department decided that if it was going to have to notify the people, it was going to do it right. Before police began the notification process, they held community meetings and met with people in every single precinct in the city. They educated the community. These people are living among us now, the police said. You are only going to be told about a few individuals, but here is some basic knowledge to stay safe. The police did that with no additional funding. We had smaller departments saying, "We cannot afford to do this." Minneapolis was not given extra money to do it. The police just decided they were going to do it, they were going to do it right, and they were going to do a good job, and they have.

The *Atlanta Journal-Constitution* just ran an in-depth series on sexual predators titled "Why Megan's Law is Not Enough." We hear a lot about what is wrong with notification laws. They are a start. They are tools that

are only as good as those who use them. I know many people have been arrested in Minnesota simply for not registering as sex offenders. They are back in jail. That is a good step.

We set up a model policy task force through our Police Officers Standards and Training Board, and I was really intrigued by the process. When Jacob was first kidnapped, I assumed the whole world was working together to try and find him. Boy, was I wrong. Agencies do not always cooperate. The sheriff's department was not necessarily used to working with the BCA and FBI. All of this was foreign to them, but they did a good job. They pulled together.

When I sat through this task force for model policy, I learned that turf battles happen everywhere. Law enforcement sometimes blames the Department of Corrections, and the Department of Corrections blames the probation or parole officers, and they think the treatment people are at fault, and what about social services? It is easy to throw blame around. You should think about this the next time you find yourself saying, "We are doing our job, but they are not."

You could call a victim's parents and explain to them why the investigation is not working and see what you can do to make it better. See what you can do to improve communication between agencies. Maybe another visit to the legislature is necessary to make the notification law more efficient. Education does not happen just with people in your community. I had to educate our governor as to why we were going to do this. We are constantly educating legislators so they know what we need.

Since most sex offenders are not in prison, the people in the community need to know what they are supposed to be watching out for — not just for one offender who is going to be released but for all

those already living in the community. When notification meetings are held in Minnesota, the community hears about general safety for 30 minutes and then 5 minutes are devoted to the specific person being released. I think that is important, because the law does not cover areas that people need to be aware of.

A lot depends on attitude. Attitude is everything in terms of how you go after these people. Our intent is to have fewer victims. We want to prevent these people from harming other children.

We need to educate. We do not want kids walking around scared. We want them to walk around smart. We get phone calls and letters from parents whose kids escaped from attempted abductions because they knew what to do. We are trying for fewer victims. I do not want to see another family live through what our family has gone through.

We need cooperation. There are other agencies within your communities. There are sexual assault centers with speakers available. Use resources that are there. Call the National Center for Missing and Exploited Children (NCMEC) (1-800-THE-LOST). It can provide an overview of this issue that none of us are going to get individually. There are also nonprofits that work for missing children.

We formed a professional organization called the Association of Missing and Exploited Children's Organizations (AMECO). These are organizations that help find missing children and help law enforcement, and they will also help you get legislation passed. They have speakers and they go after those who victimize children.

You may know about Morgan Nick, who was kidnapped in Alma, Arkansas. Morgan's mother, my friend Colleen Nick, often says that one person with a vision is worth

99 people with just an interest. It will take all of us to build a world worthy of our children.

I want to thank you for taking the time to work on this problem together. I want to thank the Bureau of Justice Statistics, U.S. Department of Justice, and SEARCH, The National Consortium for Justice Information and Statistics, and everybody who organized this conference. It is very exciting. You have a chance to see what is working in our communities so you can fight to have it in your community. Find out how we can make registries work and what needs to change.

We know kids are getting smarter. We know communities are getting smarter. We do have the right to go after those who violate our kids. I cannot ever address a group of children without talking about hope. The NCMEC has given us information on many cases involving children who come home after long periods of time. Most of those come home because of law enforcement, but not always. Everyday citizens who are aware of those who victimize children call the police.

We need to know that all the pieces are in place for our children to come home. We can never give up. I know of a man from Minnesota who was reunited with his family after 26 years. I hope it does not take us that long to find Jacob. I would like you to personalize these 2 days and take your work to heart. Never give up, and never forget about our missing kids.

I would like to end with a verse that was given to me by one of Jacob's classmates. It was written 5 years after Jacob was abducted. It is called "Ode to Jacob."

My song is twice as loud now
because I have to sing for the
both of us. I sing of the joy,
pain, and growth I'm living,
and for your life, a life I hope

has song. I hope the man who forgot what innocence is allows you to sing, even if it's in your heart. I hope one day the song we all sing together will reach his ears, because that'll be the day you can join us and sing the harmony.

I want to thank all of you for the work you do every day. I do not know if you are aware of the impact it has on our lives. When we need you, you are there and you have something in place to help us. I want to extend an offer to help you if you need me in any way to make registry laws more effective so we can protect our kids. I would like to do that for you. Thank you. I hope you have a very successful conference.

Sex offenders and offending: Learning more from national data collection programs

DR. JAN M. CHAIKEN

*Director, Bureau of Justice Statistics
U.S. Department of Justice*

National sex offender registries are the outgrowth of increased technical capability and evolving public awareness of the new uses that can be made of offender information recorded at each step in the criminal justice system. The public safety interest in this information and evolving public demand for greater knowledge about criminal justice system operations reaffirm the importance of good criminal history record information and the benefit of statistically measuring the government's response to crime. These two issues are fundamental concerns of the Bureau of Justice Statistics (BJS).

Understanding sex offending and its consequences require good record keeping on both offenders and victims. This means the development of a continuing partnership among the various government components responsible for responding to sex offenders and sex-offense victims and for measuring how well we are addressing this very fundamental public concern.

NIBRS – The next generation of crime information

Today BJS, the FBI and SEARCH are working toward nationwide implementation of the National Incident-Based Reporting System (NIBRS), a statistical and records management system that takes us to the next generation of information about crime and offending. Today, we are also talking about the improvement of a criminal records infrastructure

which is complete, accurate, timely and, most importantly, which can be shared across jurisdictions. What is known about an offender in one place will soon be instantly known in other places where that offender may travel or settle. Together, these two developing national efforts pave the way toward a more sophisticated understanding of the many varieties of sex offenders and sex offending.

Handgun crimes, domestic violence, hate crimes and violent sex offenses have been the principal stimuli for improving our data on crime and offenders. These improvements, however, will impact all types of crimes and victims, and we will know a great deal more about those who commit crime.

At BJS, we view NIBRS in this historical context of crime statistics development: How do we get closer to measuring and describing the actual crime phenomenon itself? NIBRS data permit the collection of comparable information across jurisdictions about the crime, the victim, the offender and the environment in which their interaction occurs. NIBRS also captures the uniqueness of the crime problem in each participating jurisdiction.

Rather than a narrow group of 8 Index offenses meant to approximate what is happening with crime, NIBRS collects information on 57 types of crimes — 46 Group A crimes and 11 Group B crimes. For the first time ever in law enforcement statistics, NIBRS provides a forum for crime

victims by providing detailed information about who the victims are, how many offenders they faced in an incident, if they have any relationship to those who offended against them, and the consequences of the crime to them in lost property and injuries suffered.

Incident data are critical to our knowledge of violent sex crimes where the victim can be of either sex, where the age of the victim can be known, where a relationship between victim and offender, if any, can be described, where the type of sex offense can be characterized, and where victim injuries can be catalogued. It is the diary of the violent sex offense victim's experience as recorded by a police officer.

In many ways, NIBRS will expand information about violent sex crimes similar to the way the Supplementary Homicide Reports (SHR) expand our knowledge and understanding of murder and non-negligent manslaughter. For example, the SHR allows us to examine in great detail murders that arise from rapes or sexual assaults.

Detailed knowledge on sexual assault murders

An estimated 427,000 murders occurred in the United States between 1976 and 1995. Circumstances surrounding the murder were known in about 333,000 of these murders, or in about 8 out of 10. In those murders where the details of the crime were known, about 4,900 murders, or approximately 1 in 68 murders,

involved a rape or other violent sex offense. In 1995, murders involving rape and other sex offenses accounted for about 0.8 percent of all murders with known circumstances. That is about the same percentage as in 1993 and 1994, but well below the peak of 1.9 percent of all murders established in the latter part of the 1970s.

About 95 percent of the offenders in sexual assault murders were male, compared to 87 percent of the offenders in all other types of murder. About 6 in 10 sexual assault murderers were white, while less than half of the offenders in all murders were white. Sexual assault murderers were, on average, 5 years younger than all murderers — 26 years old for sexual assault murderers compared to 31 years old for all murderers. Half were age 24 or younger.

Knives were the most commonly used weapons in sexual assault murders, accounting for 29 percent of the murders. Firearms were used in 17 percent of sexual assault murders; blunt objects were used in 13 percent; hands and feet were used in 20 percent; and other methods, such as asphyxiation or poisoning, accounted for about 22 percent.

About 82 percent of sexual assault murder victims were female. This is quite a large percentage when you consider that, in all murders, 24 percent of the victims were female. About two-thirds of sexual assault murder victims were white, while about half of all murder victims are white. Victims averaged about 32 years of age, and about 1 in 4 were under the age of 18.

In fact, among murder victims age 13 to 17, rape or sexual assault occurred in more than 3 percent of the cases; this is higher than the percentage found among any other victim age group. Sexual assault murders were about twice as likely

as all murders to involve victims and offenders who were strangers: 39 percent of sexual assault murders and 21 percent of all murders involved victims and offenders who had no prior relationship.

More data sought on sexual assaults of children

Except for the aggregate counts of forcible rape of a female victim from Uniform Crime Reporting (UCR) statistics, little is known from current law enforcement data about the factors associated with recorded crimes involving rape or attempted rape. The goal of NIBRS is to extract more useful data from information collected at a crime scene so we can maximize the use of that information. With the advent of NIBRS, the kinds of information about crime previously available only for murder and non-negligent manslaughter can now be used in the analysis of other crimes, particularly violent crimes.

A police chief interested in learning whether more sexual assaults against children were occurring in his or her jurisdiction could easily focus attention on those rapes and sexual assaults — regardless of the victims' sex — where the victim was under age 18. The chief could then compare the rates of occurrence, taking into account the number of age-eligible youth in the population, to other NIBRS jurisdictions.

Mr. Lawrence Greenfeld, principal deputy director of BJS, recently conducted a study of imprisoned offenders whose victims were children under age 18. Utilizing BJS's National Survey of Inmates in State Correctional Facilities, a self-report survey conducted among nearly 14,000 State prisoners every 5 years, he learned something from incarcerated sex offenders that, to our knowledge, had never been reported anywhere before. Two-

thirds of all offenders serving time in State prisons for rape or sexual assault had a victim under age 18.

Since there are an estimated 95,000 sex offenders in State prisons today, well over 60,000 most likely committed their violent sex crime against a child under age 18. This finding is consistent with BJS data on rape from 12 States — which did not include sexual assault and was limited to female victims — that showed more than half the victims were under 18.

What is even more shocking is that for the majority of these prisoners serving time for violent sex crimes against children, their victims were age 12 and under. This really makes the case as to why this type of information needs to be collected at the incident level. BJS repeatedly emphasizes that there are few things more important for police departments to record about crime than basic information on the victimization of children, especially young children.

Examining NIBRS data on rape

In order to give a clear example of the utility of NIBRS data for improving our understanding of violent sex offenses, I will review some of the interesting findings obtained from the first batch of NIBRS data submitted to the FBI. (BJS received data tapes for calendar year 1991 from the first 3 participating States — Alabama, North Dakota and South Carolina. These 3 States account for about 3.3 percent of the U.S. population. BJS staff decided to focus its first data analysis on rapes. These 3 States account for 3.4 percent of rapes reported nationwide.)

About 10 percent of the rapes in the 3 States did not conform to the UCR definition of forcible rape for these three reasons:

- in 8.7 percent of the rapes, the victims were male;

- in 0.8 percent, both the victim and offender were female; or
- in 0.2 percent, the victim was male and the offender was female.

Rape victims were about evenly divided between whites and blacks. In about 88 percent of forcible rapes, the victim and offender were of the same race. About 80 percent of the rape victims were under the age of 30, and about half of these were under the age of 18. Victims younger than 12 years of age accounted for 15 percent of those raped, and another 29 percent of rape victims were between the ages of 12 and 17. Among the youngest victims of rape — those less than 12 years old — the victim knew the offender nearly 90 percent of the time.

According to law enforcement agencies reporting these data, 43 percent of these young victims were assaulted by family members, almost 4 times the proportion found among victims age 30 or older (11 percent). Older victims (age 30 or older) were about 12 times as likely as the youngest victims (less than age 12) to have been raped by a stranger (36 percent versus 3 percent).

Among victims age 18 to 29 — the largest age group of rape victims — about two-thirds had a prior relationship with the rapist, but the rapists were 7 times as likely to have been acquaintances as opposed to family members (57 percent versus 8 percent). Just over 40 percent of the rapists were age 30 or older, about twice the percentage of victims of this age group (41 percent versus 20 percent). About 1 in 8 rapists was a juvenile offender (under age 18). In 9 out of 10 rapes where the offender was under age 18, the victim was under age 18 as well.

Just over 60 percent of the rapes took place in a residence. About 1 in 3 rapes by a stranger took place in a residence, while 9 of every 10

family rapes occurred in a residence. The 3 States collectively averaged 8 rapes a day, ranging from 11 per day on Saturdays to 6 per day on Wednesdays. Nearly one-third of the rapes took place between midnight and 4 a.m. and there was little variation in time of day by the victim/offender relationship or by the location where the rape occurred. The largest percentage of rapes occurred during the 12-hour block between 8 p.m. Friday and 8 a.m. Saturday.

Five percent of the rapes involved the use of a gun, 7 percent involved a knife, and 80 percent involved the use of physical force only. Rape by a stranger involved the use of a gun 10 percent of the time, about 5 times as likely as family rapes (2 percent). About 8 percent of rapes committed by ex-spouses involved the use of a gun and another 12 percent involved the use of a knife.

Fourteen percent of rapes involving black offenders and black victims involved the use of a gun, about twice the percentage of white-on-white rapes (7 percent). Interracial rapes, black-on-white or white-on-black, were equally likely to involve use of a gun or knife (22 percent compared to 21 percent). Rapes occurring in or near a roadway or alley were the most likely locations where the offender used a gun (13 percent).

About 40 percent of rape victims suffered a collateral injury, with 5 percent suffering a major injury such as severe lacerations, fractures, internal injuries or unconsciousness. More than half of spousal rapes, rapes by ex-spouses and stranger rapes resulted in injury to the victim, while about one-quarter of parent-child rapes resulted in major injury. Injuries were most common among victims age 30 or older and in rapes where the offender used a knife. Nearly 6

in 10 rapes involving a knife resulted in injury to the victim.

As these examples show, NIBRS fills in the details about crime which help law enforcement planners target the most common characteristics of crime and consider prevention strategies based upon firm knowledge about crime. Questions about whether violent sex crimes are increasing or whether such crimes involving children are declining in Bellevue or Seattle or in any of the other 9,000 cities and 3,000 counties in the United States are difficult to answer at both the local or national level other than by mostly anecdotal or impressionistic evidence.

NIBRS provides a framework for systematically documenting and analyzing patterns of violent sexual assault crime and offending in a local community, for comparing that community to contiguous or comparable communities anywhere in the United States, and for comparing one's own community to the Nation as a whole.

Criminal history records show picture of sex offenders

Criminal history records are the best formal portraits for examining the lives of those who commit violent sexual assaults. In 1995, there were about 130,000 arrests for rape and other sex offenses. These arrests should have resulted in entries to criminal history records, since the vast majority of those arrested for violent sex crimes were adults: 84 percent of those arrested for rape and 83 percent of those arrested for other sex offenses were age 18 or older. The number of persons in prison for sexual assault offenses other than rape is growing rapidly since 1980, second only to drug offenses. It increased 15 percent per year, compared to an overall average of 7 percent per year for drug offenses.

The criminal history record can play an important role at each stage in the case processing of those arrested for violent sex crimes. One of the most critical case decisions occurs shortly after arrest when conditions for pretrial release are established by the court. BJS data from large urban counties indicate that just over 1 percent of felony filings are for rape.

About one-half of felony rape defendants are released from detention prior to the disposition of their case. Only about 3 percent of rape defendants have no bail set and are not considered eligible for release. About two-thirds of rape defendants have additional charges besides the charge of rape. For most, the additional charges are also felonies. About one-half of those released prior to adjudication by the court obtained release by non-financial means, such as release on recognizance.

About one-half of the rape defendants in the BJS sample from large urban counties had a prior history of arrests, with the vast majority of those arrests having been for felony offenses. About one-quarter of rape defendants had at least five prior arrest charges. In fact, an estimated 27 percent of these rape defendants had a criminal justice status, such as probation or pretrial release, at the time of the rape arrest. Most rape defendants with a prior arrest history also had a history of convictions. About one in eight rape defendants had a prior conviction history that included violent felonies.

Among rapists who gained pretrial release, about one in five violated the conditions of that release by failing to appear in court, by being arrested for a new crime or by violating some other condition of release. Clearly, an accurate and current criminal history record, which incorporates information not only on prior

criminal behavior and convictions but also on conformity with prior pretrial release conditions, would be a critical factor in determining whether or not a defendant should be released.

BJS data reveal that about two-thirds of convicted rape defendants receive a prison sentence, 19 percent receive a jail term and 13 percent receive probation following conviction. A prison sentence for convicted rapists depends heavily on how their cases were adjudicated. Sixty-three percent of those who pleaded guilty were sent to prison, while 89 percent of those convicted by a jury received a prison sentence. When a jury decided guilt, the average prison term was twice as long as the term imposed following a plea, a difference of 13 years.

Research has consistently shown that the gravity of the offense, combined with the extensiveness and seriousness of the criminal record, are key factors in the sentencing decision. There is little specific knowledge, however, about the extent to which criminal history information is used or the specific weight given to an individual's criminal record by prosecutors, judges or juries in rape cases. BJS data on felony case processing indicate a 20-percentage-point difference for violent offenders in the likelihood of receiving prison if they have a prior conviction history.

About one in five violent sex offenders in prison had been on probation or parole at the time of the new offense for which they were incarcerated. In order to play a significant role in the sentencing decision, such records of justice system handling should necessarily be complete and accurate and should provide the capacity to identify those with prior histories of violence and sexual assault. There is no doubt that courts will rely upon that record for

determining the substance of the sentence they impose.

For many offenders, few other entries appear on the criminal history record following sentencing. Based on a 1995 survey of State criminal history records repositories, it is clear that local jails and probation and parole agencies rarely provide details on the dates of entry to or exit from custody or supervision and the manner in which supervision is terminated. Prisons are a bit better because they often fingerprint offenders at admission and release to ensure the prisoner's identity. Such fingerprint cards may then be sent to a State Identification Bureau that enters the information on the state rap sheet.

An obvious key element of a criminal history record should be the status and movement information relative to convictions received. Such information is especially critical for those who must make decisions regarding sex offenders in the community. Information about those offenders with prior records of unsuccessful community supervision would be of enormous value in completing presentence investigations and determining dischargeability, level of supervision or risk to the public.

Recidivism is the best available measure of the public safety consequences of sentences, whether it is failure following imprisonment or failure following a sentence to community supervision. By definition, recidivism must be an outcome that is determinable from a criminal history record.

BJS's most recent recidivism study tracked a sample of prison releases representing 109,000 offenders discharged from prisons in 11 states in 1983.

Rap sheets revealed more than 19,000 prior arrests for rape and sexual assault preceding the most recent imprisonment and 4,000 arrests for rape or sexual assault in

the 3 years following release in 1983.

Offenders convicted of rape or sexual assault accounted for just over 4 percent of those released from prisons in the study States in 1983. Over the 3-year period following release, about one-half of both rapists and sexual assaulters were re-arrested for a new crime, more than one-third were re-convicted, and more than one-quarter were re-imprisoned within the 3-year follow-up. An estimated 28 percent of released rapists had a new arrest for violence and 8 percent were re-arrested for rape. A similar BJS 3-year study of felony probationers nationwide found that 20 percent of rapists were re-arrested within 3 years and 3 percent were re-arrested for a new rape.

Follow-up study of discharged prisoners

BJS is now initiating the largest follow-up study of discharged prisoners ever undertaken, with the joint support of FBI CODIS staff and the Corrections Program Office in the Office of Justice Programs, U.S. Department of Justice. Plans call for tracking self-representing samples of releasees from 12 to 15 States and undertaking follow-up of every single sex offender released in those States. When we complete this effort, we expect to have about 10,000 offenders convicted of rape or sexual assault who were discharged in 1994 and followed through criminal history records for 3 years. If follow-on funds are obtained, we may continue to track these offenders.

This is a very opportune time for this kind of study because of the many improvements that occurred in criminal history records since our last study. The National Criminal History Improvement Program (NCHIP) created automated records where we had only manual records before.

NCHIP will allow us to look at arrest transactions in States other than the State in which the offender was released. This was something that caused great difficulty for us in the last study. Most importantly, the timeliness of arrest reporting and greater completeness of disposition reporting will provide records that bear little or no resemblance to the records we used in the last study, where disposition information was missing more often than not.

Progress in the battle against sex offending and sex offenders is dependent upon improved knowledge about the crimes and the offenders — goals common to both NIBRS and NCHIP. NIBRS, the crime statistics model for now and the future, will forge a greater partnership between crime and justice data at the local and national levels. Such data will provide more information and descriptions of the context of crime, which are essential for policy development and funding support at the Federal level.

The kinds of questions being posed to all levels of government by our citizens about violent sex offenses and offenders can only be answered by data which sensitively describe the conditions under which victims and offenders interact, the basic reason for NIBRS. It is moving us that much closer to the actual description of the criminal incident, the place where our understanding of crime is least likely to be distorted by other factors. The FBI and BJS are committed to ensuring that all jurisdictions have the most useful information on how victims and offenders come together and the consequences of these contacts. We believe NIBRS holds the promise for this kind of information opportunity.

[Note: This presentation was prepared by BJS Principal Deputy Director Lawrence A. Greenfeld, who was unable to attend the conference.]

Federal panel: Wetterling Act/Megan's Law compliance issues

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Panel introduction

MARLENE BECKMAN

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Good afternoon. Today, this panel is going to bring you the news — the good news and the not-so-good-but-getting-better news.

The good news is the progress we have made in State establishment of sex offender registration and notification programs. In summary, the Jacob Wetterling Act, Megan's Law and the Pam Lychner Act,¹ taken together, require States to develop registration systems for convicted child molesters and other sex offenders, require States to release to the public relevant information about registered offenders when necessary to protect the public, and require the U.S. Department of Justice to build and maintain a database to track registered offenders nationwide.

Since enactment of these laws in 1994 and 1996, we have come a long way toward establishing a coordinated approach among local, State and Federal governments to address the challenge of making our communities safer from sex offenders. Prior to the enactment of the Jacob Wetterling Act, 39 States had some form of sex offender registration. Today, all 50 States have sex offender registration systems in place. Prior to the enactment of Megan's Law, six community notification laws had been enacted. Following the passage of Megan's Law, there was a period of intense activity with 21 States passing notification legislation. Today, 45 States have passed legislation that either authorizes community notification or allows individuals or agencies outside the criminal justice realm to access sex offender registration information. That is the good news.

The not-so-good-but-getting-better news is that the majority of States do not yet meet all of the Federal requirements of the Wetterling Act and Megan's Law. They are in danger of losing 10 percent of their Byrne Program money as a result.² This panel will

address the issues surrounding Federal compliance.

The first speaker, Lisa Gursky Sorkin, will speak briefly about the three statutes and their interrelationship. She will also talk about the development of the Department of Justice's guidelines for the Wetterling Act and Megan's Law. The second speaker, Donna Feinberg, will speak more specifically about the Federal registration requirements. She will also address the basis on which States will be considered for a 2-year "good-faith-efforts" extension of the statutory deadline for compliance.

The third speaker, James C. Swain, will talk about the policies and procedures for the States' submissions of their registration and compliance programs and their requests for extensions of the deadline to the Bureau of Justice Assistance.

Each speaker will be allotted approximately 10 minutes, which will leave us time for questions. We feel this provides a very important opportunity for us to hear from you.

¹ In order to comply with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (42 U.S.C. § 14071), States must register child molesters and sexually violent offenders residing in their States. Megan's Law (104 P.L. 145, 100 Stat. 1345) requires release of relevant information to protect the public from child molesters and sexually violent offenders. The Pam Lychner Sexual Offender Tracking and Identification Act of 1996 (42 U.S.C. § 14072) amends certain Wetterling Act requirements and creates responsibilities for the FBI.

² *Editor's Note:* The Edward Byrne Memorial State and Local Law Enforcement Assistance Program, administered by the Bureau of Justice Assistance, U.S. Department of Justice, provides formula grants to States to improve the functioning of the criminal justice system, with emphasis on violent crime and serious offenders. Under the Wetterling Act, States must establish a 10-year registration requirement for persons convicted of

certain crimes against minors and sexually violent offenses and must establish a more stringent set of registration requirements for highly dangerous sex offenders, characterized as "sexually violent predators." If a State fails to comply with the Wetterling Act, 10 percent of the State's Byrne formula grant may be withheld.

The trilogy of Federal statutes

LISA GURSKY SORKIN

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Good afternoon. I am going to provide a brief overview of the Federal laws intended to guide States in developing their sex offender registration and notification programs. A trilogy of statutes now exists that defines Federal policy concerning registration and notification for convicted child molesters and other sexually violent offenders.

We recognize that there is some confusion about the way these laws fit together, how they work together and what they mean for the States. I want to shed some light on these questions, and also talk about the written guidelines the U.S. Department of Justice produced to help States comply with the Federal laws.

Wetterling Act

The first of this trilogy of statutes is the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, which was enacted as part of President Clinton's 1994 Crime Act.¹ It requires States to establish effective registration systems for convicted child molesters and other sexually violent offenders. It also requires the establishment of a more stringent set of registration requirements for a subclass of the most highly dangerous offenders, who are designated under the Act as "sexually violent predators."

The Wetterling Act provides a set of minimum national standards for the States to follow in developing conforming registration

programs. The States' obligations under the Wetterling Act fall roughly into four categories, which I will describe in brief.

First, States must require certain offenders to register. Convicted child molesters and other sexually violent offenders must register and provide law enforcement with current addresses for 10 years. Sexually violent predators, the most dangerous subclass of offenders, must provide the State with more extensive registration information. They must continue to register until they are found to no longer be sexually violent predators. The Wetterling Act contains standards and procedures for States to follow to determine who is and who is no longer a sexually violent predator.

Second, States need to ensure that they maintain accurate registries. What good are registries if they include offenders with stale, old addresses? The Wetterling Act provides procedures for States to follow to conduct proactive, periodic address verification. States need to verify addresses annually for most offenders, and quarterly or every 90 days for sexually violent predators.

Third, States must maintain and distribute registry information to law enforcement. This requirement has several facets. States must ensure that registry information is contained at a central State repository. We do not want registry information scattered throughout numerous counties or cities. When police conduct an investigation, they need to know where they can

find registry information. The Wetterling Act requires this.

We also want to ensure clear lines of communication between local and State law enforcement. The Wetterling Act contains a number of provisions to help ensure that these folks are working together during an investigation or just conferring about the movement of sex offenders in general. This also applies to communication between States. Under the Wetterling Act, if an offender tells the State he is moving to a new State, the old State needs to tell the new State that this offender is on his way. The Wetterling Act encourages open lines of communication between different levels of law enforcement, both within and among States. That is a very important policy goal.

Fourth, States must disclose information to the public when necessary for public safety. I will discuss this requirement shortly in connection with the Federal Megan's Law.

I want to emphasize that States do not need to change their laws or statutes to comply with the Wetterling Act. The Wetterling Act only requires each State to have a conforming registration program. States can accomplish this by statute if they want, but they can also use regulations, administrative practices or policies to comply.

The Wetterling Act gives States until September 13, 1997, to establish conforming registration programs. This is 3 years from the date of enactment. The Attorney General can extend this deadline by 2 years for States making good-

¹ 42 U.S.C. § 14071.

faith efforts to comply. States unable to adopt conforming registration programs by September 1997 will lose 10 percent of their Byrne Formula Grant funding.

Megan's Law

The second in the trilogy of Federal laws is Megan's Law, enacted in May 1996.² (Numerous States have enacted their own versions of Megan's Law, named after 7-year-old murder victim Megan Kanka.) The Federal law amended the community notification provisions of the Wetterling Act. Originally, the Wetterling Act allowed States to release information to the public if they felt it was warranted, but release of information was not required.

Megan's Law requires States to release registration information to the public when it is necessary for public safety. This requirement is often referred to as "mandatory community notification." The compliance deadline for Megan's Law is the same as for the Wetterling Act. States need to have conforming notification programs by September 1997. The Attorney General can also extend this deadline by 2 years on the basis of a State's good-faith efforts. States that fail to implement a conforming system will lose 10 percent of their Byrne Grant funds. (This is not an additional 10 percent added on to 10 percent for noncompliance with the Wetterling Act; Megan's Law is part of the overall Wetterling scheme and is treated the same way.)

Pam Lychner Act

The third law in the Federal trilogy is the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, enacted in October 1996.³ The Lychner Act imposes a number of obligations on Federal, State and local governments to enhance public safety. The Lychner Act has three principal requirements:

- First, it obligates the Attorney General to establish a national database at the FBI to track the whereabouts and movements of convicted sex offenders.
- Second, the Act requires the FBI to handle sex offender registration in States lacking a minimally sufficient sex offender registration program. The term "minimally sufficient" is defined in the Lychner Act.
- Third, the Lychner Act amends the Wetterling Act to prescribe more stringent registration requirements. For example, under the Wetterling Act, as originally enacted, most offenders needed to register with the State for 10 years. Under the Lychner Act, a number of offenders will need to register for life. These include aggravated offenders and recidivists, along with sexually violent predators.

The Lychner Act establishes two basic requirements for the States. First, the extent that the Lychner Act amends the Wetterling Act, the States will need to make sure that their registration programs enacted under the Wetterling Act meet the new Lychner Act requirements. Lifetime registration is one example of a new State requirement. The Lychner Act gives States 3 years from the date of enactment, or until October 1999, to implement its provisions.

To put this in perspective, States need to comply with the Wetterling Act as originally enacted, plus Megan's Law, by September 1997. Lychner Act requirements take effect 2 years later. The enforcement provisions under the Lychner Act amendments to the Wetterling Act are the same as for the rest of the Wetterling Act. A 2-year, good-faith extension is available, and 10 percent of the State's Byrne Formula Grant money is at stake.

The second general requirement for the States under the Lychner Act is enhanced communication with the FBI about convicted sex offenders. The Lychner Act imposes a number of freestanding requirements on the States that are not part of the Wetterling Act. These requirements are designed to facilitate the FBI's role in sex offender registration. The FBI needs to have the most accurate and up-to-date information to maintain a national database that works. The source of that information is the States.

The Lychner Act thus imposes a number of requirements to make sure States are communicating with the FBI about sex offenders living in their jurisdictions. These requirements take effect 1 year from the date of enactment of the Lychner Act, or by October 1997.

Justice Department guidelines

This has been a brief overview of Federal sex offender registration and notification laws. I want very briefly to address the Justice Department's guidelines for these statutes, which have generated almost as much confusion as the statutes themselves. Both seem to change with frequency.

In April 1996, the Justice Department published final guidelines for implementation of the Wetterling Act. These guidelines described the Act's

² Pub. L. 104-145, 100 Stat. 1345.

³ 42 U.S.C. § 14072.

various requirements. They were intended to help the States develop conforming registration systems. Exactly 1 year after the final guidelines were published, we took the next logical step and published proposed guidelines. These were published on April 4, 1997.⁴

We did this for two reasons: Number one, we had not previously provided guidance for Megan's Law because it was enacted after we had published the final Wetterling Act guidelines. We wanted to provide more information about what Megan's Law meant. Number two, in the course of working with the States after the previous final guidelines were published, we learned that we needed to provide more guidance in a number of areas.

Several interpretive questions had arisen, and we recognized that more information was needed. In this latest round of proposed guidelines, we attempted to resolve some of the interpretive questions that were raised.

These proposed guidelines were published for public comment. The public comment period ended in early June 1997 and the final guidelines were published in the *Federal Register* in July 1997.⁵

⁴ 62 *Fed. Reg.* 16180 (April 4, 1997).

⁵ 62 *Fed. Reg.* 39009 (July 21, 1997).

Justice Department guideline changes and clarifications

DONNA FEINBERG

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I would like to discuss approaches States may take to establish sex offender registration and notification programs in compliance with the Wetterling Act. This information may be found in the Justice Department's revised guidelines for the Wetterling Act and Megan's Law, which have been published in the *Federal Register*.¹

Since the original Wetterling Act guidelines were published in April 1996, a majority of States submitted enacted or proposed sex offender registration provisions to the Justice Department for preliminary review. The review process raised a number of questions, which are addressed in the revised guidelines. The guideline clarifications concern some of the following issues.

Registration procedures

Several clarifications cover initial registration procedures. When an offender is released from incarceration or placed on probation or parole, the Wetterling Act requires courts and/or prison officers to follow certain procedures. They must notify the offender of State registration obligations, obtain registration information from the offender, and submit it to the registration agency. Some States assign this responsibility to probation or parole

officers whose responsibilities relate to correctional matters or the execution of sentences. The revised Wetterling Act guidelines make it clear that assigning these responsibilities to such officers is permissible.

The Act provides that, if a person who is required to register is released from incarceration, the responsible officer must obtain the required registration information and forward it to the registration agency within 3 days of receipt. Many States do not wait until the release date to obtain the information. They require offenders to submit the information 30 or 60 days prior to release. The guidelines make it clear that this approach is permissible as long as the information is forwarded to the appropriate agencies no later than 3 days after release.

Once the initial registration information is obtained, some States require the responsible officer to send it to the State registration agency and to the local law enforcement agency concurrently instead of transmitting the information to the State agency only, which is then required to forward it to the responsible local law enforcement agency. The guidelines make it clear that concurrent transmission is permissible if registration information is promptly made available to both the State registration agency and the local agency with jurisdiction over the offender.

The guidelines make clear that the Wetterling Act does not

preclude a State procedure where the prison officer or court transmits the initial information indirectly to the State agency by sending it first to the local law enforcement jurisdiction where the registrant will reside, assuming the local agency is then required to forward the information to the State agency. Procedures of this type will be deemed in compliance as long as the information is submitted to the local law enforcement agency within the applicable time frame — no later than 3 days after the offender's release. The State procedures must also ensure that the local agency forwards the information promptly to the State registration agency.

Address changes

The Wetterling Act requires registrants to report address changes to the State registration agency within 10 days of moving. However, many State programs do not require registrants to send their address changes directly to the State agency. Information is submitted to a local law enforcement agency or other intermediary, such as a parole or probation officer, who is required to forward it to the State agency. The revised Justice Department guidelines make clear that a registrant can submit address changes through an intermediary as long as the registrant provides the intermediary with the new address information within the time frame specified in the Act — or no later than 10 days after a move — and State procedures ensure that the

¹ "Final Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act," 62 *Fed. Reg.* 39009 (July 21, 1997)

intermediary forwards the address change information promptly to the designated State law enforcement agency.

Sexually violent predator

A number of the guideline clarifications involve the sexually violent predator registration requirements. The Wetterling Act prescribes more stringent registration requirements for the subclass of offenders characterized as "sexually violent predators." Some States require that sexually violent predators be civilly committed as opposed to making them subject to more stringent requirements. The revised guidelines clarify that this approach is permissible.

The Wetterling Act requires that the sentencing court determine whether a person is or is no longer a sexually violent predator. The guidelines clarify that this requirement only means the determination must be made by a court that is legally competent to institute the more stringent registration requirements prescribed for sexually violent predators, which could be the court in which the offender was convicted of the underlying sex offense but does not have to be.

Under the Wetterling Act, States have discretion with regard to the timing of the determination of whether an offender is a sexually violent predator. A State may decide that the predator determination be made at the time of sentencing or as part of the original sentence, but it is not required to do so. The predator determination could also be made instead by a competent court when an offender has served his prison term and is about to be released from custody.

Should a State choose to subject all persons convicted of a sexually violent offense to the more stringent registration requirements,

it would not be necessary for sexually violent predator determinations to be made by a competent court with the assistance of a board of experts prior to the commencement of the registration obligation. However, it would still be necessary for a court, assisted by a board of experts, to terminate the heightened registration requirements of sexually violent predators. Moreover, even if it is determined that a person is no longer a sexually violent predator, the guidelines make clear that this does not relieve the person of the Wetterling Act's 10-year registration requirement, which applies to any person convicted of a criminal offense against a minor or a sexually violent offense.

Length of registration

Another guideline clarification involves the length of registration. The Wetterling Act requires that released convicted offenders be subject to registration and periodic address verification for at least 10 years. However, sexually violent predators must be made to register for life unless relieved of the obligation by a competent court determining that the offender is no longer a sexually violent predator. The revised guidelines make it clear that a State would not be in compliance if it allows offenders' registration obligations to be waived or terminated before the end of the prescribed 10-year registration period based on findings such as rehabilitation or that continued registration does not serve the purposes of the State's registration provisions.

Address verifications

Other guideline clarifications cover address verification procedures. The Wetterling Act requires annual address verification with the designated State agency for all offenders, who are required to return within 10 days an address

verification form sent to the registrant's last reported address.

Verification intervals are 90 days rather than annually for sexually violent predators. Some States delegate address verification functions to local law enforcement agencies. The revised guidelines permit this approach to periodic address verification as long as procedures ensure that the State registration agency is promptly notified if, through the process, it is discovered that the registrant is no longer at the last reported address. The revised guidelines also clarify that States may require the registrant's personal appearance at a local law enforcement agency to return an address verification form rather than returning the form by mail.

Notification methods

Another guideline clarification involves the methods States may use to notify local jurisdictions about registration and change of address information.

After receiving registration information from the responsible officer or court, the State law enforcement agency must immediately enter the information into the appropriate record system and notify the local law enforcement agency where the person expects to reside. The Wetterling Act allows States to decide what method they will use to notify local law enforcement agencies. Permissible options include written notices, electronic or telephone transmissions, and on-line access to registration information.

Extensions

States currently unable to comply with the Wetterling Act and Megan's Law should consider submitting requests for an extension of the September 13, 1997, compliance deadline.

A State should submit its most recent proposed or enacted registration and community notification program along with a letter explaining its "good-faith efforts" to comply with the Wetterling Act and requesting an extension of the statutory deadline. The letter should describe the State's efforts to comply with the Wetterling Act, including an explanation of the concrete steps taken and the progress made since its passage in September 1994.

The State should also explain why it has not been able to establish a compliant program by the deadline. In addition, the State should describe in detail its plan to establish a compliant program by the end of the extension period and submit a timetable specifying the anticipated time frame indicating when each step of its overall plan will be taken.

Applying for a compliance deadline extension

JAMES C. SWAIN

*Director, State and Local Assistance Division
Bureau of Justice Assistance, U.S. Department of Justice*

As the last member of the panel, it falls on me to sum up and to review our process for handling extension requests. Ms. Nancy Gist's June 18, 1997, letter outlines what the States must do to meet the good-faith extension requirements.¹

Today's speakers have made every effort to be helpful and responsive. Both Lisa Gursky Sorkin and Donna Feinberg spoke not only about the registration and notification legislation, but also about the guideline changes made in response to some of the concerns raised about issues such as local versus State reporting requirements.

Additionally, this panel was scheduled in response to your requests for hands-on assistance with the very difficult matter of the September 13, 1997, Wetterling Act compliance deadline. We will continue technical assistance after this meeting through SEARCH, through our own staff and through our general counsel so we can bring all the States into final compliance with the registration and notification statutes.

As for the extension request letters you have been submitting, I want to tell you where we stand today.

All but 14 of the 56 States and territories have now applied for a 2-year extension to come into full compliance with the Wetterling Act. We have been able to contact most States to point out the kinds of problems meeting the criterion set out in Ms. Gist's letter that we are finding in the extension request letters already submitted.

We will review each extension request, and then the staff at the Bureau of Justice Assistance (BJA) will contact you to provide assistance. That is the first step.

In reviewing the extension request letters you plan to submit, please consider the following:

- Does your letter include a copy of your State's proposed or present legislation or regulation or does it refer to a document that was already submitted?
- Does your letter address the good-faith efforts and concrete steps your State has taken to date to come into compliance?
- Does it provide a timeline indicating the steps that will be taken to comply with the Wetterling Act?

BJA staff will contact each State to go over any elements missing from your extension request letters. When a letter meets the basic requirements, we will refer it to Donna Feinberg in our general counsel's office. She will review the request to see if good faith is demonstrated and if concrete steps have been taken to legally justify and warrant a 2-year extension.

If an extension is justified, we will prepare a very short and straightforward letter from Ms. Gist to you indicating approval of a 2-year extension for your State. After you receive that extension, we want to work with you intensively to bring your State into full compliance with the Wetterling Act. Technical assistance will be made available to you. We are going to try to be very helpful.

Every time I think about the States and the Federal government working together, a number of stories come to mind about how the Federal government is helpful to you as your partner. Former U.S. Supreme Court Justice Tom C. Clark used to tell an old story that I think is appropriate.

It seems there were these fellows who would travel to a remote cabin every year to hunt. They would hunt bear, play cards and drink beer, and not necessarily in that order. The loser at cards would have to leave the cabin to hunt for bear. If he found one, he would kill it and bring it back so everyone could help skin it. The loser on this particular day dutifully left the card game, which remained in progress, and went to hunt bear.

He was confronted by a bear just as he rounded a corner. The man pulled his rifle to his shoulder and took aim but the gun misfired. The man took one look at the bear — who was very angry at this point — threw down his gun, and ran back to the cabin with the bear in hot pursuit. He pulled open the cabin door and then jumped behind it, using the door as a shield. The bear stormed into the room, and the man

¹ The letter by Ms. Gist, Director of the Bureau of Justice Assistance, is included as Appendix 1.

slammed the door shut. "I've got your bear," he shouted. "Now skin it."

We brought you this wonderful bear. Now all you have to do is skin it and bring back the material we need on this very important topic. We will work with you and do anything we can to help you reach compliance. Thank you very much.

Panel question-and-answer session

Marlene Beckman, Panel Moderator
Lisa Gursky Sorkin, Panel Member
Donna Feinberg, Panel Member

Ms. Marlene Beckman: I want to mention one thing before we begin taking questions from the floor. The Office of Justice Programs, in cooperation with the State Justice Institute and the National Institute of Corrections, has funded a contractor to establish the Center for Sex Offender Management. The Center provides technical assistance and training opportunities.

If your jurisdiction or State is interested in implementing the containment theory of sex offender management or exploring the Arizona model of lifetime probation, which has useful data on sex offenders and sex offender issues, this is an opportunity for us to work with you. We expect to begin work very soon with jurisdictions around the country that want to improve their management of sex offenders in the community.

We understand sex offender registration and notification laws are available, but we can build on these to enhance community safety. We want to work with jurisdictions interested in going further in managing sex offenders in the community. With that, I will open the floor to questions.

Question: The letter our State received indicating our compliance with the Wetterling Act included information about electronically transmitting information to the FBI. If we are not yet transmitting that information to the FBI, will we lose 10 percent of our Byrne Formula Grant Funds?

Ms. Donna Feinberg: The Wetterling Act only requires that

States transmit conviction data and offender fingerprints to the FBI if they have not already been sent there. The Lychner Act, which has more stringent requirements, may be what you are referring to, but those requirements are not in effect for another 2 years.

Ms. Lisa Gursky Sorkin: You may be referring to an FBI communication asking States to send information in conjunction with the National Sexual Offender Registry. The Attorney General set up a national registry at the FBI in response to a presidential request. The FBI asked the States to make sure their offender data are included in the national registry.

This is related but distinct from the Wetterling Act, Megan's Law and Lychner Act requirements we talked about.

Question: Can you explain the requirements for States that civilly commit sexually violent predators? Must a State board of experts be established to civilly commit these predators?

Ms. Feinberg: The revised guidelines make clear that civil commitment is an acceptable alternative to imposition of the more stringent registration requirements on sexually violent predators. That is, if your State requires civil commitment of individuals determined to be sexually violent predators, the State would not need to impose address verification at 90-day intervals and lifetime registration and address verification while the sexually violent predators are civilly committed. However, the State would still need to have a system

whereby a board of experts assists a competent court in making the determination as to whether an individual is — or is no longer — a sexually violent predator.

Question: When you talked about community notification, it was unclear whether guidelines allowed for the release of information on adult offenders whose victims were also adults. In Illinois right now, we cannot release information to the community on any offenders whose victims were adults. We can only release information on offenders whose victims were children.

Ms. Feinberg: The guidelines make clear that the mandatory disclosure requirement applies to offenders convicted of crimes against minors and to offenders who have been convicted of sexually violent offenses, including offenses against adults. States have discretion to determine when it is necessary to disclose registration information to protect the public about registrants convicted of covered offenses against minors and adults.

Question: Offenders are required to verify their addresses by returning forms sent to their last known addresses. Do they have to send back fingerprints and photographs with the forms?

Ms. Feinberg: That is a Lychner Act requirement. Under the Wetterling Act, the State law enforcement agency is required to send out a nonforwardable address verification form to the offender's last reported address. The offender must sign and return the form within a specific time period

verifying the offender's current address.

Question: Do they also have to return fingerprints and photographs?

Ms. Feinberg: Not at this time for compliance with the Wetterling Act. That is a requirement of the Lychner Act.

Ms. Beckman: States can enact Lychner Act requirements now if they want, but they are not required to do so for another 2 years.

Question: Does the Lychner Act cover any crime committed by an adult against a child? What if an 18-year-old steals a 13-year-old's bicycle?

Ms. Sorkin: The Lychner Act does not change the offense category requirements covered in the Wetterling Act. The Wetterling Act requires States to register convicted child molesters and other sexually violent offenders. The statute defines what these categories mean. The Lychner Act does not enlarge the category of offenders who need to register.

Ms. Beckman: You need to read the Wetterling Act and the Lychner Act in conjunction with each other.

Question: I have a question concerning address verification. Does the language in our State's verification and notification legislation actually have to describe the verification process?

Ms. Feinberg: No, the State's address verification procedures do not have to be specifically spelled out in its legislation. If your State has an administrative policy establishing its verification procedures, the policy should be submitted to BJA along with whatever legislation your State has enacted or proposed so we can review them together for compliance with the Wetterling Act.

Question: Is it absolutely necessary to verify an address by sending a nonforwardable form to

the last known address? Most of our State's residents use post office boxes. They can change residences as many times as they want and still keep the same post office boxes. How do we verify addresses under those circumstances?

Ms. Feinberg: The nonforwardable address verification form is a statutory requirement of the Federal legislation.

Question: I am not talking about forwarding a form to a new address. I am talking about moving from place to place and keeping the same post office box. My post office box and my physical location have nothing to do with each other.

Ms. Beckman: That is a very good point. What you are saying is the post office box is meaningless for address verification.

Ms. Sorkin: The Wetterling Act contains a very specific procedure that States need to follow to verify addresses. We have seen States start to build on that minimum requirement. There are States that now require house visits, for example. Law enforcement is actually checking the offender's address to make sure that person is still living there. But the Wetterling Act very specifically requires the mailing of the address verification card.

Question: But what if the verification card does not work?

Ms. Beckman: Your State may want to institute more stringent registration requirements. The Wetterling Act sets a floor. In your particular State, you may need to build on that floor. That is perfectly okay. You can always do something more.

Question: When an offender is on probation or parole in Oregon, the local police, probation or parole officer is responsible for sex offender registration. When the offender's probation ends, the State Police are responsible. If the offender moves while he is on

probation or parole, does the Wetterling Act require us to inform the State Police?

Ms. Feinberg: A registrant has an obligation to notify the designated State agency of any address changes under the Wetterling Act. If, under State procedures, the registrant notifies his probation or parole officer of address changes, that officer must notify the State registration agency.

Question: As the offender's supervising officer, do I have to notify the State Police when the offender notifies me of his move?

Ms. Feinberg: Yes, if the State registration agency is the State Police. In addition, the local law enforcement agency with jurisdiction where the person has moved must be notified if the person has moved to another jurisdiction.

Ms. Sorkin: You want to make sure the information at the State level is accurate and updated.

Question: When the offender requires supervision, I am the registration agency. When they no longer require supervision, the State Police are the registration agency. That is the issue.

Ms. Sorkin: Under the Wetterling Act structure, there needs to be an overall central repository in the State that contains information on all the State's sex offenders. If your State follows the Wetterling Act requirements, then you need to let the central repository know when an offender changes his address. You are keeping track of the offender.

Question: Does the Department of Justice have the right to grant a waiver to a State that may follow a different procedure to verify addresses than the one required by the Wetterling Act, but one that still achieves the same goals? We do not verify address in our State by using a nonforwardable postcard, but we still have an effective procedure in place to meet

the verification requirements. Do you have the legislative authority to grant waivers in these instances?

Ms. Sorkin: No, we do not. We are sympathetic to your concerns because we have received similar inquiries from other States with respect to address verification and the Wetterling Act. The Act is very specific and does not give us the authority to exempt States from complying with certain provisions. We tried to give States as much flexibility as we possibly could in our guidelines. We bent over backwards in interpreting some of the statutory provisions, but at the end of the day, we still have statutory language we need to implement.

Ms. Beckman: Let me also say that we are moving toward greater flexibility. The Justice Department is trying to keep its eye on the goal of good sex offender registration and notification systems. There may be five different ways to reach that goal. As long as we all get to that goal, that is what is important. I would encourage you to explain in your submission the system you have and we will do what we can to be flexible, but we are limited by the words of the statute. We do recognize that the goal is an effective statute or program that will make sure people register and ensure that the community is notified. Let us see if we can work together to get to that point.

Question: Can you please explain the Lychner Act's 3-year implementation schedule?

Ms. Beckman: This is the clarification of the Lychner Act timetable.

Ms. Sorkin: There are a number of sections of the Pam Lychner Act that directly amend the Wetterling Act. This means that every State's registration and notification programs must conform to these new requirements. The compliance timetable for these provisions of the Lychner Act is 3 years from the

date of enactment, or October 1999. Among these new provision are ones concerning the length of registration and the lifetime registration provision I mentioned earlier. There are also provisions covering who needs to serve on the State boards of experts that help the sentencing court determine who is a sexually violent predator. Overall, there are about five changes that the Lychner Act makes to the Wetterling Act. Congress allows 3 years for States to comply with these new Lychner Act requirements. The deadline is October 1999. The Lychner Act also imposes a number of other requirements on the States to ensure that the FBI can do its job under the Lychner Act. Those requirements take effect in October 1997, 1 year from the Lychner Act's date of enactment.

Question: What are the other requirements that the Lychner Act imposes?

Ms. Sorkin: The other Lychner Act requirements are scattered throughout the statute. We can create a specific list for you, if you wish. They concern making sure the FBI has accurate and up-to-date registration information, sending required information to the FBI, and also making sure offenders know what their responsibilities are.

Question: Does the Wetterling Act cover offenders who are in the military?

Ms. Sorkin: It is my understanding that sex offenders who are convicted in military courts are not covered by the Wetterling Act. Basically, it covers State law offenders who are subject to registration requirements. There is legislation pending in Congress right now that would extend registration requirements to Federal and military offenders.

Question: Under the Federal guidelines, what systems do States have to have in place in regard to

juvenile offenders and community notification?

Ms. Feinberg: Under the guidelines, juvenile offenders do not have to be covered by State registration provisions unless they are convicted as adults. If they do not have to register, the State does not have to provide notification to the community regarding juvenile offenders.

Ms. Beckman: Again, the Federal Wetterling Act and Megan's Law provide minimum requirements. If a State chooses to go further and create legislation that covers juvenile offenders, that is certainly up to the State.

Question: Are you going to come up with any specific criteria to help with risk assessment?

Ms. Feinberg: I do not believe we are going to determine risk assessment criteria for States to follow.

Question: Under the Lychner Act, what happens if someone moves to your State from another State that requires registration, but the individual does not meet your State's criteria for registration?

Ms. Feinberg: The Wetterling Act covers a number of specific offenses. States have a certain amount of latitude in determining which State offenses need to be covered under their systems, but they should be fairly similar. One State may not cover the exact offense that another State may cover because of differences in State criminal offenses. Chances are, however, if someone required to register in one State moves to your State, he will probably be required to register under your registration provisions as well because of a conviction for an offense that your State program needs to cover for compliance with the Wetterling Act. States need to cover offenders who move to their States and require them to register within 10 days of establishing residency.

Question: How do these three statutes affect individuals who are registered as sex offenders and who committed their offenses on Indian land?

Ms. Sorkin: In our guidelines, we encourage States to require Federal, military and tribal offenders who live in their jurisdictions to register because convicted sex offenders pose a similar public safety risk, regardless of where the offender was convicted. We have encouraged States to do this, but our reading of the statute is that the Wetterling Act as it currently exists does not require them to register.

Question: Do the statutes indicate who should sit on the boards of experts that consider the sexually violent predator designation for certain offenders?

Ms. Feinberg: The State has a lot of discretion in that respect. The revised guidelines make it clear that the board should be composed of at least two people who are experts in the treatment and behavior of sex offenders. Other than that, the board just has to be authorized under State law and it must have the authority to assist the court in making determinations about sexually violent predators. Under the Lychner Act amendments to the Wetterling Act, the boards should also include representatives of victims' rights groups and representatives from the law enforcement community.

Ms. Beckman: The additional Lychner Act requirement is not effective for another 2 years.

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Federal funding support

Federal funding support for sex offender registries

Dr. Jan M. Chaiken

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Federal funding support for sex offender registries

DR. JAN M. CHAIKEN
Director, Bureau of Justice Statistics
U.S. Department of Justice

The Bureau of Justice Statistics (BJS) has administered the National Criminal History Improvement Program (NCHIP) since fiscal 1995. This is the kind of program that percolates up from the States to the Federal level. Pressure and lobbying from State representatives persuaded Congress to include NCHIP grant programs in the Brady Handgun Violence Prevention Act and the National Child Protection Act.¹ Congress then actually appropriated funds for those grant programs.

NCHIP has supported efforts to improve databases containing information about criminal history records, protection orders, domestic violence and child abuse. The recent Supreme Court decision concerning the Brady Act does not change the grant program.² We will

be continuing in fiscal 1998 and completing the originally authorized \$220 million of funding.

We believe NCHIP has resulted in enormous strides forward in the quality, accuracy, completeness and accessibility of State criminal history records. The statistics are not yet in to prove this point, but we are confident that when SEARCH completes its survey of the States at the end of 1997, the comprehensive nature of the advances brought about by this Federal funding program will be clear to us all.

Federal focus on sex offender registries

The latest NCHIP program announcement, just sent to the States in draft form, includes a hint that our next planned focus area will be sexual offender registries. NCHIP applications for fiscal 1997 cannot request funding for sex offender registries. A number of you obtained Federal funding for your sex offender registries through domestic violence grants or other record-upgrade grants.

On June 21, 1996, President Clinton issued a directive to the Attorney General to identify obstacles to building a national sex offender registry in response to the universal movement toward State-level sexual offender registries and the fact that many sexual offenders may be mobile and crossing State lines. As with many data systems of this type, the Attorney General delegates the building of the Federal computer components to the FBI and delegates these functions to BJS: assisting States to

help them participate in the national system; collecting related statistical and evaluative information; and providing technical assistance to the States.

BJS's role is vital to ensure that the FBI's systems are more than empty computer shells and modems with no useful information in them. FBI officials refer to this as "populating" the FBI's computers. It is a good expression, because a national sex offender registry with no offenders in it may look nifty, but it is not worth much to law enforcement or the public. On August 24, 1996, President Clinton announced his goal to begin development of the registry based on plans developed by the FBI, BJS and other Justice Department components. The President said he would include \$25 million for BJS to provide grants and other assistance to States in his fiscal year 1998 budget request.

This request made its way through the Congressional appropriations process. The funds will be made available to help improve sexual offender registries across the Nation and to conduct a more formal review of individual States' reporting systems, which vary in sophistication.

¹ Brady Act, Pub. L. No. 103-159 (November 30, 1993); National Child Protection Act of 1993, Pub. L. No. 103-209 (December 20, 1993).

² *Printz et. al. v. United States*, U.S. Supreme Court Case No. 95-1478, argued December 3, 1996, decided June 27, 1997. Two county sheriffs filed separate actions protesting an interim Brady Act provision that required Chief Law Enforcement Officers of local jurisdictions to maintain an interim system to check the criminal histories of gun purchasers until a national system is established in November 1998. The U.S. Supreme Court ruled 5-4 in favor of the petitioners that the provision was a violation of the 10th Amendment of the U.S. Constitution (States' rights), although the provision was ruled severable from the remainder of the Brady Act, which was left intact.

Registry effort coordinates with record improvements

Because this Presidential initiative is so closely tied to ongoing efforts to improve criminal history records and to provide for the National Instant Criminal Background Check System (NICS) as required by the Brady Act, BJS plans to coordinate it with the overall goals of better and more useable records on the criminal careers of offenders. The President's requested funding would be used largely to enhance existing State systems and databases to better meet the requirements of the Jacob Wetterling Act, Megan's Law and related State legislation. Funds would also be used to establish, identify, collect and maintain a standard level of sexual offender data for exchange through a National Sexual Offender Registry, to be managed by the FBI.

This effort would promote automated input from courts and corrections, while helping to automate registries currently not automated. Monies would be made available to develop on-line access for law enforcement throughout the States. Procedures and software would be developed for automated input. These funds can be used to develop systems and procedures for sharing registry information with the FBI's interim system or for working toward the permanent system, which is to be part of NCIC 2000.

As with all of NCHIP, the requested funds will be available to assist States in complying with either State or Federal law. Complete, accurate and up-to-date records that are readily accessible to local law enforcement and that can be linked to records in the national registry for sharing with other States are funding priorities.

States will be permitted to use BJS's Federal funds without regard to whether offenders are being registered under State law or according to Federal law or regulations.

Federal funding applications for each State's sexual offender registry will be submitted by an agency designated by the governor to administer the funds. In many cases, this will be the same as the State's NCHIP agency. We believe this approach will speed the establishment of registries. As soon as funds are available, BJS will know the State agency eligible to apply for funding, and we can prepare an expedited process for applying for the sex offender registry portion of the NCHIP funding for fiscal 1998.

Technical assistance will be made available by BJS directly to the State agency that needs help upgrading its systems or interfacing its registries with FBI records.

Public notification issues examined

Much study has been devoted to the issue of whether to notify the public about sexual offenders living in communities. Peter Finn of Abt Associates, a government and business consulting and research firm, conducted a study that examined registration and notification systems in 32 States. He found that, although registration has been evaluated and shown to be useful in apprehending repeat offenders, the notification statutes are too recent for clear evaluation of results. The one empirical study mentioned in Finn's report found

no evidence that notification reduces recidivism.³

Therefore, as we proceed in improving registration and notification procedures, it is important to keep in mind the privacy rights being jeopardized, and the number of people who are being harassed or losing employment or stature as a result of registration. This provides a counterbalance to the public benefits of notification. Most of us believe the public benefits will be large, but we have to be open-minded enough to await clear evidence and act appropriately if, on balance, the benefits are small.

Appropriately enough, Finn cites the BJS's own publication, "Correctional Populations in the United States," which reports that the number of sexual offenders is on the rise, jumping more than 300 percent between 1980 and 1994.⁴ Though there are inpatient and outpatient treatment programs for sex offenders, treatment is effective at best with a handful of offenders, and there is a general perception that recidivism rates are high. In 1983, sex offenders were less likely than other offenders to recidivate, but they were much more likely to recidivate into sexual offending.

BJS receives numerous requests from individuals who want to know, "What are the recidivism rates of sexual offenders?" As I mentioned this morning, the latest national statistical information we

³ U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Sex Offender Community Notification, Research in Brief* series, by Peter Finn, Abt Associates (Washington, D.C.: Government Printing Office, February 1997).

⁴ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Correctional Populations in the United States, 1994*, by Jodi M. Brown, et. al. (Washington, D.C.: Government Printing Office, June 1996) p. 10.

have on this important topic is from 1983. We are pleased to have obtained funding from the FBI and the Corrections Program Office within the Office of Justice Programs recently to field a study that will update these statistics. The study will focus specifically on sexual offenders and examine whether DNA data assist in identifying and convicting such offenders.

Many States have enacted community notification laws in response to heightened awareness of the seeming proliferation and recidivism of sex offenders. These laws are designed to make sex offender information available on request to individuals and organizations. They authorize or require probation and parole departments, law enforcement bodies or prosecutor offices to disseminate information about released offenders to the community at large.

Community notification reflects the perception that registration alone is inadequate to protect the public against sex offenders, and that notification provides the public with a better means of protecting itself. Notification advocates believe that informing the public about the presence of a sex offender in the community will allow residents to take action to keep themselves and their families out of harm's way. Others believe that making offenders notify communities on their own may be ill-advised, has great potential for unreliability and is inconsistent with efforts to rehabilitate offenders.

However, there is a great deal of work involved to determine the geographic range of identification; to decide who receives notice; to consider hearings for offenders who want to contest their notification status; and the actual process of notification. For those who do not know, typical

information made available in one or more States includes an offender's name, address, date of birth, social security number, a photo, fingerprints, criminal history, place of employment and vehicle registration. Eight States currently include blood samples for DNA identification, and Michigan includes a DNA profile in the registry if it is available.

Notification laws have been challenged in the courts. I think it is safe to say that States may encounter two types of legal problems related to sex offender notification. First, civil suits may be brought against agencies and individuals involved in the implementation of the notification statutes, perhaps for failure to remove or expunge an erroneous registration record, a record that was reversed by the courts, or one that had a time limit for remaining in the registry. Second, legal challenges to the statutes themselves could occur.

While offenders in some States have sued to reduce their notification status without challenging the constitutionality of the notification statute, the courts have generally upheld the notification level originally established. Though all States have some form of registry in place, certain States have more elaborate systems and technical resources than others. Some may only be capable of initiating very limited record keeping to provide identification of newly convicted eligible sexual offenders. For these jurisdictions, assistance will be provided to automate or retrieve relevant records of offenders' past convictions. States with more advanced registries will want to focus their grant funds on developing communication interfaces with the FBI.

National registry: A powerful tool

The National Sexual Offender Registry, with the participation of the States, has the potential to be a powerful tool for the law enforcement community. However, the registry will only be as valuable as the effectiveness of its database. Proper safeguards must be implemented to assure that the public has access to information that is supposed to be publicly available while only authorized persons have access to restricted information about sex offenders.

Since the laws on this vary from State to State, the challenges are obvious, especially if an offender travels back and forth between two States. Also, to ensure accuracy, the system must be available for quick and regular updates to reflect current data in your State and in neighboring States. The development of such databases is, unquestionably, a big challenge, but the BJS looks forward to supporting State efforts to develop and enhance the means of making your communities safer.

As part of our commitment to you, the BJS funded this conference. We hope you find it useful.

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FBI panel: Interim and permanent solutions

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History and current status of a national sex offender registry

EMMET A. RATHBUN

*Unit Chief, Criminal Justice Information Services Division
Federal Bureau of Investigation*

I am here today to speak on the history and current status of the National Sexual Offender Registry. In the Fall of 1995, the FBI's Criminal Justice Information Service's Advisory Policy Board (CJIS APB) began to discuss the benefits of a national sex offender registry and where the registry could best be housed.

Suggestions were made to designate the registry as a National Crime Information Center (NCIC) "Hot File" or to include it in the Interstate Identification Index (III). Since the Wetterling Act¹ strongly encouraged States to establish sexual offender registries, and many States had started to implement them, the APB determined that a national index listing the State database or agency that maintained the detailed registrant information would be appropriate.

The APB also decided that this index would be designated as a NCIC Hot File to allow maximum accessibility to all law enforcement. The Board delayed establishment of the Hot File until after delivery of the NCIC 2000 system to avoid the cost of programming both systems since no urgency for the national registry was evident, either legislatively or from users.

On June 25, 1996, President Clinton issued a directive to the Attorney General instructing her to develop a plan to implement a

national sexual predator and child molester registration system. He asked that the plan be ready for his review by August 20, 1996. The President's directive made it necessary for the FBI to develop a national registry mechanism to operate on an interim basis until delivery of the NCIC 2000 system. The directive required the creation of a national system based on the Wetterling Act that allowed national access to the sexual offender registration information maintained in each of the individual State systems.

The FBI's long-term plans still called for the creation of a sexual offender Hot File in the NCIC 2000 system, but the Bureau had to assemble an interim plan to meet the President's goals for a national sexual offender registry to be available in the period before the NCIC 2000 system is up and running.

To address the President's directive, the FBI looked for the lowest impact solution in terms of development cost and implementation time. The FBI's interim solution, proposed to the President under the Attorney General's signature on August 22, 1996, called for a modified version of its existing Flash Program with a link provided to each State's sex offender registry through the National Law Enforcement Telecommunications System (NLETS). (The Flash Program is used to track Federal parolees and probationers.)

At its October 1995 Board meeting, NLETS decided that States should create a "message key" that would permit the electronic search of State sex offender registry information, just as driving record information is shared across State lines. NLETS requested that the message keys be in place by November 1996.

During his Saturday radio address on August 24, 1996, the President announced he had received the Attorney General's plans for implementing a National Sexual Offender Registry. He committed to the Nation that the Attorney General's planned system would be operational within 6 months, or by February 24, 1997.

Through diligent hard work and determination, the FBI was able to deliver the interim provisions for use on February 23, 1997.

The interim provisions encourage States to submit sexual offender registration data — including the registrant's name, date of birth, the date the registration began, the date the registration expires, the case number and the registering agency's Originating Identification Number (ORI) — to the FBI for inclusion in the subject's criminal history record. To ensure that all entries into the FBI's database are based on positive fingerprint identification, the FBI also requires the subject's FBI number and State identification number, if the State has established such a number for the subject.

¹ The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071.

The FBI recognizes that some law enforcement agencies may not have forwarded the records of all convicted sexual offenders for inclusion in the III. In these instances, the FBI requires the submission of a criminal fingerprint card along with the registration data so a record can be established.

To maximize the amount of information contributed to the interim national sexual offender registry, the FBI accepts input, modification and deletion data in three formats: Batch tapes; on-line transmissions to the III; or through the use of the FBI's "Flash/Sexual Offender Registration/Cancellation Notice" I-12 Form.

It is important to note that the submitting State is responsible for ensuring that the registrant data are current and accurate. The FBI encourages States to develop the capability to add, modify and delete registry data via the III. Even States that are not III participants can use the III for sexual offender registration purposes.

The registry data are posted to the subject's criminal history and provided as a part of the subject's record each time an authorized record request is made. A subject's status as a registered sexual offender is prominently displayed in response to both III name searches (QH) and record requests (QR) transactions. In answer to a name check, the response notes that the subject of record is a registered sexual offender. To determine the Originating Agency Identifier (ORI) number, case number and the registry start and expiration dates, a record request must be made.

Sexual offender registration will be noted in a subject's rap sheet in the same manner, regardless of whether the rap sheet is obtained via the III, in response to a record request (QR) or via the mail. A notice indicating that the record subject is a registered sexual offender will appear immediately

prior to the identification information included in their FBI identification record. Specific registration information will appear at the end of the FBI identification record similar to the format used for the inclusion of a wanted notice.

Registration information presented in the FBI identification record will include the name the subject is registered under; the registering agency's name and ORI number; the registering agency's case number; the date registration began; and the date registration expires. The expiration date may be "non-expiring" for individuals required to register for life.

The registering agency's ORI provided in the rap sheet can be used to contact the registering agency via NLETS, or by other means, to obtain specific registration data.

To date, more than 17,000 III records contain sexual offender registration data. Nine States² are actively registering offenders at the national level. Several others are testing software for on-line access, or are preparing to submit paper registration forms. The sexual offender registries of 9 States³ are available via NLETS.

Although we are often inclined to focus on the gross statistics, painful cases such as those that prompted enactment of the Jacob Wetterling Act, Megan's Law and the Pam Lychner Act remind us of the importance of each entry into the national index, whether it is in the interim system or the NCIC 2000 file. The national index is a tool law enforcement officials can use to identify citizens in their

communities who are known sexual offenders and respond accordingly. It is intended to serve foremost as a preventative measure and, secondarily, as an investigative aid. The tool will only work, however, with the cooperation and participation of all States.

The convicted sexual offender registry will be a Hot File in NCIC 2000. As most of you are aware, NCIC 2000 is being developed as a replacement system to the current NCIC system. In addition to providing a new software and hardware environment, NCIC 2000 will add new capabilities, new data fields, enhanced security and greater capacity and growth potential.

By maintaining the registry in NCIC 2000, enormous benefits are anticipated. As a Hot File, the registry information will be available to law enforcement under routine circumstances. A Hot File check is done almost every time a vehicle is stopped for a traffic violation or a traffic stop. The officer checks to see if the vehicle is stolen or if the driver has any outstanding warrants. By maintaining the registry in NCIC 2000, sex offender information will be available to officers conducting routine traffic stops.

With this knowledge, the officer may be able to prevent a crime such as this scenario: A car with a male driver and a young boy is pulled over for speeding. A check on the name and date of birth of the driver results in a hit from the registry identifying the offender as a pedophile.

Since vehicle information can be included in the registry, searches by license plate may also identify the individual as a registered sexual offender. Consider this scenario: An individual is sitting in his car in front of an elementary school. An officer's instincts alert him that something seems out of place. A check on the individual's license

² Arizona, Georgia, Nebraska, Oklahoma, South Carolina, South Dakota, Tennessee, Texas and Washington.

³ Florida, Georgia, Iowa, Kansas, Massachusetts, North Carolina, South Carolina, South Dakota and Tennessee.

plate results in a hit from the registry.

Also, law enforcement may become aware of offenders who fail to re-register after moving. Based on the law within a respective State, an arrest may be permitted under these circumstances. Unique to the registry is the capability to conduct on-line searches by ZIP code that may identify possible suspects during an active investigation.

NCIC 2000 contains two new capabilities that will facilitate the new burdens required under the Pam Lychner Act.⁴ First, images (offenders' mug shots) can be entered by the user and linked to a record. Second, a fingerprint (right index) can be linked to the record, and a user can initiate a fingerprint search by scanning the right index finger of the subject.

All records in the convicted sexual offender registry require an FBI number to enable flagging of the subject's criminal history record. This ensures the benefits of the interim system will continue and allows compliance under the Pam Lychner Act (which requires that registry information be released for conducting employment-related background checks under the National Child Protection Act of 1993).⁵

The Wetterling Act does not require Federal agencies to register sexual offenders. However, the U.S. Department of Justice guidelines relating to the Wetterling Act encourage States to require registration of Federal and military offenders. Although the Wetterling Act, as amended to date, fails to address responsibilities of other Federal agencies associated with registering Federal offenders, the amendment imposed by the Lychner Act has the potential to place a tremendous burden on the FBI, both in terms of field offices registering offenders and the CJIS Division processing fingerprints. Mr. Ralph Thomas, the next speaker, will offer further discussion on the matter.

⁴ Pam Lychner Sexual Offender Tracking and Identification Act of 1996, 42 U.S.C. § 14072.

⁵ Pub L. No. 103-209 (December 20, 1993).

The impact of the Lychner Act

RALPH C. THOMAS

*Supervisory Special Agent – Policy, Planning and Analysis Unit
Criminal Investigative Division, Federal Bureau of Investigation*

I work at the FBI Criminal Investigative Division in the Policy, Planning and Analysis Unit. This unit addresses policy issues that could impact the operations of the Criminal Investigative Division at FBI headquarters in Washington, D.C., as well as FBI criminal investigations being conducted in the field. I want to provide some background information on the task force we assembled at FBI headquarters in October 1996 to address the Bureau's responsibilities under the Pam Lychner Act.¹ I have been de facto chair of this task force since my co-chair received a promotion to another position.

The task force is comprised of representatives from various divisions at FBI headquarters, including the Criminal Investigative Division, the Criminal Justice Information Services (CJIS) Division, the Information Resources Division (which manages the information that goes into systems used by the FBI), the Congressional Affairs Office, and our finance office. Virtually every division of the Bureau is represented except for the Counterintelligence Division.

The first meeting of this task force was held in October 1996. We discussed the FBI's sexual offender registration obligations

under the Lychner Act and attempted to assess other policy issues relating to the Act, including some very serious resource implications that may arise. At the meeting's conclusion, we decided that it is the task force's goal to address policy and procedure for effective implementation of the Lychner Act at both FBI headquarters and out in the FBI's field offices nationwide.

It is difficult to determine what the FBI's role will be in meeting the registration requirements of the Lychner Act. The Act requires the FBI to register released sex offenders in States that do not have minimally sufficient registration programs. Since we do not know how many States will be deemed "minimally sufficient" in terms of their registration obligations, we do not fully know what our responsibilities are going to be.

Congress created this provision for direct registration with the FBI as a back-up or fail-safe measure. We were to act as a back-up in the remote possibility that some States would not have minimally sufficient sex offender registration programs. It now appears there may be a lot more States than we ever anticipated that will not be minimally sufficient when it comes to their registration programs. Therefore, we are in the process of implementing the Lychner Act guidelines, but we do not know what our responsibilities are until the U.S. Department of Justice lets us know how many States will not have minimally sufficient programs.

In terms of the potential impact of the Lychner Act on FBI resources, I will reiterate that the FBI must register sex offenders who reside in States that do not have minimally sufficient sex registration programs as defined by the Lychner Act. This registration must include a current address, fingerprints and a photograph. Registration must continue for at least 10 years, although the most serious, repeat sex offenders, called sexually violent predators, must register for life.

By complying with the Lychner Act, the FBI would have a significant burden placed on all its field offices, which would have to actively take part in the registration process by taking fingerprints and photographs of offenders who are required to register. This would be problematic, considering that we have very remote satellite offices in the FBI called Resident Agencies. We have 56 major field offices, but we also have one-man, special agent offices scattered throughout the United States. You can likely foresee some of the registration problems that could happen with sex offenders located in the remote plains of North Dakota, for example. Where do they register? Do they register with the Resident Agency or do they register with the FBI field office? Will our smaller offices have the necessary resources to register sex offenders? These are the types of questions we discuss during our task force meetings.

In addition, we will have to assign personnel and organize efforts to input the FBI's

¹ The Pam Lychner Sexual Offender Tracking and Identification Act of 1996, 42 U.S.C. § 14072, requires the FBI database be used for registration of sex offenders for States that do not maintain "minimally sufficient sexual offender registration program(s)."

registration information into the interim National Sexual Offender Registry system and, ultimately, into National Crime Information Center 2000. The CJIS Division would be required to verify the offender's fingerprints prior to entry of the registration record in the national registry. Currently, we have a bit of a backlog with fingerprints. That is a problem we are going to have to work out before the implementation of the Lychner Act requirements.

Another issue concerns procedures to record address changes. The FBI must establish a method to notify appropriate State or local authorities and to modify the national registry when a registered offender changes residences. This creates further burdens on the CJIS and Information Resources Divisions at FBI headquarters.

Address verification is another responsibility. The FBI must periodically verify the addresses of sex offenders it registers. The address of a sexually violent predator must be verified every 90 days. That puts substantial demands on the manpower of our violent crime squads in the field, inasmuch as the only effective way to verify an offender's address is to physically contact the offender. Address verification also requires submission of additional fingerprints and photographs. The FBI's CJIS Division would once again have to verify the submitted fingerprints.

Another major responsibility involves the search for fugitives. The FBI must locate offenders whose addresses cannot be verified. If a registered sex offender cannot be located, the FBI will have to obtain an arrest warrant and include the offender on the NCIC's wanted persons file. Our field office personnel would conceivably have to conduct fugitive investigations to

locate these offenders for registration violations.

The cost of that burden is very difficult for the FBI to quantify. Our budget office put together some projections using fugitive statistics from our California field offices along with information about noncompliant sex offenders provided by the California Department of Justice. The results were potentially staggering in terms of the impact on FBI personnel and nonpersonnel resources.

The bottom line, based on the computations, was that we would have to take every agent in each of our four California field divisions — San Diego, Los Angeles, Sacramento and San Francisco — and assign them full-time to look for sex offenders who are noncompliant (those who cannot be located or who did not register). That means every agent in every one of these four divisions, not just those who investigate violent crimes but also those who investigate drug and organized crime, white-collar crime and espionage cases — basically, every FBI agent in every one of our California offices.

Community notification is the final issue. If appropriate, the FBI may release relevant information concerning a registered offender that is necessary to protect the public. Again, this would involve FBI personnel from the CJIS Division, the Information Resources Division, the Criminal Investigative Division and the Office of Public and Congressional Affairs. We are currently working on a policy that addresses the community notification provisions of the Act. One possible strategy would utilize a centralized database at FBI headquarters that would be available to our field offices.

One of the reasons I looked forward to attending this conference was to learn more about the States' Wetterling/Lychner Act

implementation strategies. Please call me at FBI headquarters to talk about these issues, because the FBI's registration and notification obligations under the Pam Lychner Act will not succeed unless we work closely with the States and with local law enforcement officials.

My telephone number at FBI headquarters is (202) 324-3241. Please call me if you have any questions or need more information about the Jacob Wetterling and Pam Lychner Act requirements and how your State can meet them.

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Overview of current State laws

Status and latest developments in
sex offender registration and notification laws

Elizabeth A. Pearson

Litigation issues

Arguments used to challenge notification laws
— and the government's response

Dena T. Sacco

Pending legislation

Status of Federal legislation on sex offenders
and changes to current laws

Robert R. Belair

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Status and latest developments in sex offender registration and notification laws

ELIZABETH A. PEARSON
Staff Associate/Congressional Liaison
National Criminal Justice Association

I want to talk today about the history and evolution of State sex offender registration and notification laws and their quick development, especially within the past few years. I want to briefly discuss the pros and cons of registry and notification laws and what supporters and opponents of the laws have to say about them.

I will also touch on the nuts and bolts of registration and notification systems, the similarities and differences of State laws, and legislative efforts certain States undertook in 1997 to change their laws. I do not intend to present an exhaustive list of enactments, but I will provide a flavor of what is going on in the States.

Finally, I want to address cost issues and other policy implications in terms of implementation of these laws. Sex offender registration and notification is a resource-intensive proposition, so I want to examine cost issues as well as other impediments and facilitators to implementation.

Evolution

The first thing I would like to discuss is the evolution of sex offender registries. Registration laws require sex offenders to provide certain identifying information to law enforcement and corrections officials when they are released from custody for supervision in the community. All States had these laws on the books as of 1996.

Massachusetts created its registration and notification provisions in August 1996, becoming the last State to do so. The first sex offender registry was created by California in 1947. Arizona, Florida, Nevada, Ohio and Alabama followed suit in the 1950s and 1960s. Clearly, the most recent period of activity has been in the 1990s, with 38 States creating provisions since 1994.

Notification systems have evolved much more recently. They allow information from the sex offender registry to be disseminated either to specific people in the community or in a specific manner, or to be made available for public view. The purpose of the information release is to increase public awareness of sex offenders in a particular area.

The first notification law was created in Washington State in 1990 when the Community Protection Act was approved.¹ Since then, 44 other States have created notification systems. Recent information from the Washington State Institute for Public Policy indicates that Hawaii, Kentucky, Missouri, Nebraska and New Mexico are the five States that currently do not have notification provisions.

¹ WASH. REV. CODE ANN. § 9A.44.130 (West 1988 & Supp. 1997).

Pros and cons

People who support and advocate for sex offender registration and notification cite the following reasons for doing so:

- **The significant number of sex offenders under community supervision.** A December 1996 statistic from the Bureau of Justice Statistics indicates that, on any given day, there are approximately 234,000 sex offenders under the care and custody of the States, 60 percent of whom are under conditional supervision in the community.²
- **Fear of recidivism.** Research finds that sex offenders commit a wide range and a large number of sexually deviant acts in their offending lives and are reluctant to fully disclose their offense history.
- **Tools for law enforcement to assist in investigations, and grounds for holding those who do not comply with registration laws.** Law enforcement is aided by laws that help identify people and that keep offenders under surveillance and in line with their responsibilities to register.

² U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Sex Offenses and Offenders, An Analysis of Data on Rape and Sexual Assault*, by Lawrence A. Greenfeld (Washington, D.C.: Government Printing Office, February 1997).

- **Deterring sex offenders.** Offenders may be reluctant to commit new crimes if they know information about the crimes will be added to the registry and would be passed on to the community.
- **Offering citizens information to protect their children and their families.**

Those who oppose registration and notification laws cite the following reasons:

- **False sense of security.** Some fear that registration and notification systems promote a false sense of security. They fear citizens may rely too heavily on the information being released and not account for sex offenders who are not registered because they may be new to an area, or because they plea bargained to a lesser crime not included in sex offender registration laws.
- **Vigilantism, harassment.** There is concern about vigilantism and harassment of offenders trying to get their lives back together.
- **Offenders avoid treatment.** Some fear these laws inhibit offenders from seeking treatment.
- **No data on effectiveness.** There is also a lack of evaluation of proven effectiveness in terms of compliance and arrest rates.
- **Migration.** There is the fear that communities with lax or less-stringent registration and notification provisions will make it more difficult to track offender movements.

Common features

Information from the Washington State Institute for Public Policy and other sources indicate that most State registration

laws share several common features.³

The first is that these registries are maintained by a State agency, while local law enforcement is responsible for collecting information. This is not the case in every State, but it is common in most States.

Typically, the information collected includes the offender's name, address, photograph, birth date and social security number. In most States, the initial timeframe to register runs from immediately after release to 30 days. Duration of the registration requirement is typically 10 years or more. Most registries are updated only when an offender notifies law enforcement he is changing his address. Most laws apply equally to offenders convicted in other States.

Differences

A number of features are different from State to State with respect to registration laws.

The first is the lifetime registration requirement. As of 1996, only 15 States required lifetime registration for some or all of their sex offenders.

Another feature that differs is the petition for relief from registration requirements. According to information published by Elizabeth Rahmberg-Walsh in her text, "The Sex Offender," at least 11 States allow offenders to petition for relief from registration requirements.⁴ Rahmberg-Walsh also conducted research on the difference between expunging records and petitioning

for relief. She found that at least 11 States have expungement provisions, 10 of which apply when the conviction is set aside or reversed. Only Connecticut automatically expunges the offender's record after his registration term expires.

As of 1996, 13 States had address verification provisions, most of which require annual registration. Four States required verification every 90 days. Of these, New Jersey and Vermont require address verification every 90 days for all offenders, whereas New York and Pennsylvania require only sexually violent predators to verify addresses every 90 days.

The information I have on the retroactive application of registration and notification requirements is not the most up-to-date, but I think it is interesting. In 1995, the New York State Division of Criminal Justice Services surveyed 44 States which, at that time, had registration provisions. Twenty-two States had provisions in place to apply registration requirements retroactively under certain circumstances. I note that many of those States had court cases pending to assess the retroactivity application. I think most decisions based on retroactive application of registry laws indicated that retroactive application in this sense was considered regulatory and remedial and not punitive. It was, therefore, permissible.

Another unique feature concerns the registration of juvenile offenders. As of 1996, 13 States required youths convicted as sex offenders to register. Of course, juveniles tried in adult court are required to register.

Sanctions for failing to register and penalties for violation of registration laws vary significantly. Most States levy misdemeanor charges for those types of

³ Staci Thomas and Roxanne Lieb, *Sex Offender Registration: A Review of State Laws* (Olympia, Washington: Washington State Institute for Public Policy, 1995).

⁴ Elizabeth Rahmberg Walsh, *Megan's Law — Sex Offender Registration and Notification Statutes and Constitutional Challenges*, THE SEX OFFENDER, Civic Research Institute, Inc., 1997, p. 24-4.

violations, although several States increase the penalty severity for repeat offenders. Four other States — California, Mississippi, Oregon, and Washington — vary the penalty based on the severity of the offense.

As of 1996, 9 States allow DNA to be collected and inserted in the registry. Federal laws do not require DNA collection, depending instead on fingerprint and photograph identification.

Four notification categories

Notification methods fall into four basic categories:

- **Active or broad notification.** State law defines which types of offenders require community notification, as well as the scope of the notification effort. In other words, citizens do not have to seek out information before they are notified.
- **Limited disclosure.** Refers to those States that notify certain groups or agencies about the presence of sex offenders in their community based on a fear that those groups may be negatively impacted.
- **Passive notification.** Requires community groups or individuals to take the initiative to request information about sex offenders in the community.
- **Combination.** The fourth category combines ingredients of the previous three.

— Active notification

The first category I want to address is active notification. There are three ways States conduct active notification.

The first is "tiering." Many States have a tiered process to assess risk and then base notification on that risk assessment.

In Minnesota, which enacted its community notification law in 1996, the Department of

Corrections provides this information. Risk assessment and notification levels are based on a tiered process. For example, first-time offenders are considered low-risk, which corresponds to a level-one notification. Information sent to law enforcement may be shared with other law enforcement, victims and witnesses. This is a fairly common method of notification. Other states that utilize the tiered process are Arizona, New Jersey, Rhode Island, Washington and Wyoming.

Many States allow law enforcement some discretion in releasing information they find relevant and necessary to the community. Two examples are Tennessee and Montana. Tennessee notification is based on the need to protect the public. Information is released by county sheriffs, who actively make the notification determinations themselves. In Montana, notification can begin when a court order exists allowing the release of information. When that happens, officials use a press release to distribute the information to the community.

Many States specifically define the method and scope of the notification necessary. Examples include Alabama, Louisiana and Delaware. In Alabama, residents are notified by mail and copies of registry information are posted in various public buildings. The scope of notification is dependent on the size and the population of the area.

— Limited disclosure

The second category of notification is limited disclosure. Several States allow limited disclosure of sex offender information to organizations or officials who might be vulnerable to sex offenders in the community. One example is Indiana, where the statute requires notification to all public and nonpublic schools; to State agencies that license or hire

individuals who deal with children; and to registered daycare facilities.

— Passive notification

Passive notification is the third category. It allows the public to view sex offender information maintained at a central location. This process is used in several States, including Alaska, Colorado, Kansas, Michigan and Oklahoma, where the State maintains a list of registered sex offenders for view at the local level.

— Combination

The final category combines elements of the previous three. Several States use a combination of notification methods. California, for instance, recently released a CD-ROM containing sex offender information. It also established a World Wide Web page and a 900-prefix telephone number residents can call to get information about sex offenders. Here, the passive approach is combined with a more active approach, which allows law enforcement agencies to disclose information to the community.

Wisconsin has a similar system. It established an 800-prefix telephone number with law enforcement discretion in determining the scope of community notification. Texas provides notification via the newspaper in both English and Spanish. Residents of a particular community can obtain information from their law enforcement agencies that is directly related to that specific community.

Risk assessment

Risk assessment is important to the success of registration and notification programs. According to the Washington State Institute of Public Policy, risk is most often assessed upon conviction or release from incarceration. There are several types of risk assessment. Some States classify risk based on

the history of offense. For example, California's classification is based on the violent sex offenses and violent non-sex offenses that the offender has in his criminal history. Other States use risk assessment tools, objective measures or guidelines to help determine the offender's risk level.

Some States allow the court to make the risk determination and some States use a board or panel of experts to assess risk.

For example, the Minnesota End of Confinement Review Committee consists of a treatment specialist, a victims' rights representative and a law enforcement official to help make risk determinations for the State.

No risk level is assigned in broad notification. Notification is automatically dispensed for certain sex offenders. In Georgia, for example, the notification requirement applies to all convicted child sex offenders.

Finally, in some States, such as Tennessee, law enforcement officials determine the risk an offender poses to the community.

Technology

As many of you are aware, technology has entered the discussion of registration and notification laws. California just released a CD-ROM containing registry information. Several States have telephone banks people can call to access registry information: they are California, Florida, Wisconsin and New York. In Florida and Wisconsin, the State provides an 800-prefix telephone number. California and New York provide a 900-prefix telephone number.

Florida, Indiana and Kansas offer sex offender information on Web sites. One county in Michigan has established a Web site run by a local newspaper using information provided by the sheriff. Benton

County, Oregon, also has a Web site.

Legislative changes

Various legislative actions have changed certain States' registration and notification laws over the past year. The first area I want to talk about is compliance legislation. A lot of States are struggling to come into compliance with the Federal law. A couple of States considered and a couple passed compliance legislation.

The first I would like to discuss is Illinois. The Illinois Legislature has approved two bills to amend current law to bring the State's registration and notification provisions into compliance with the Jacob Wetterling Act. It is my understanding that neither bill has been signed. They are awaiting the governor's signature. He is expected to sign one or the other. They contain similar provisions to bring Illinois into compliance with the Wetterling Act and the Federal Megan's Law.

The bills would require a released sex offender to register with the proper agency within 10 days of release rather than the current 30 days. The Illinois State Police would conduct address verification by mail and sexually dangerous individuals would register with local law enforcement every 90 days for life.

The second State I want to discuss is North Dakota. In 1997, North Dakota enacted a compliance bill to create a qualified board of experts to make sexually violent predator determinations.⁵ The bill requires sex offenders to register for 10 years. Sexually violent predators would be required to register for life.

Wyoming was one of the States that instituted notification

provisions in 1997. The Wyoming law is similar to the Minnesota law in that it provides a tiered process to conduct notification.⁶ It considers a variety of risk assessment factors. Is the offender under supervision or receiving counseling or therapy? Does his criminal history include a high probability of recidivism? What were his offenses?

The State of Nevada enacted a significant piece of legislation related to sex offender laws that included some very interesting provisions, and I thought I would share them with you. The bill expands the conditions that a convicted sex offender must meet while on probation.⁷ They include abiding by a curfew, submitting to a polygraph examination and abstaining from alcohol use. It allows for the collection of DNA samples and imposes a fee on offenders in certain circumstances to support collection and testing of that information. It clarifies that real estate agents are not responsible for disclosing information to buyers or buyers' agents about sex offenders in the community. It also extends current law to allow some collection of information on juvenile offenders.

Utah and Washington made slight technical changes to their laws. Utah added some offenses to comply with Federal law and also added an address verification component.⁸ Washington made several clarifications. The revised Washington law now requires the Washington Association of Sheriffs and Police Chiefs to develop a model policy for law enforcement when disclosing information about

⁶ HB 0061, 54th Legislature of the State of Wyoming, (Feb. 20, 1997) (enacted).

⁷ SB 325, 97th Legislature of the State of Nevada, (July 16, 1997) (enacted).

⁸ SB 5759, 55th Legislature of the State of Washington, (April 22, 1997) (enacted).

⁵ HB 1048, 55th Legislative Assembly, State of North Dakota, (March 24, 1997) (enacted).

sex offenders.⁹ It also requires the Department of Health and Human Services and the Sentence Review Board to report to the legislature on the number of offenders who are in each classification level.

Cost

We have cost information from New Jersey detailing what that State spent supporting registration and notification systems. In fiscal 1997, New Jersey spent approximately \$700,000 from the Local Law Enforcement Block Grant Program and from State funds to update its DNA database. A reported \$400,000 in State funds and \$200,000 in State forfeiture money was allocated to State prosecutors to try sex offender cases. Some \$700,000 in State funds went to public defenders for tier classification hearings.

Challenges

The National Institute of Justice (NIJ) prepared a *Research in Action* report on this topic, published in February 1997.¹⁰ In 1996, NIJ representatives talked to 13 criminal justice practitioners in 8 States as well as 2 national experts on sex offender laws. They found there were few impediments to implementation and that States are not having a difficult time implementing these laws, with the exception of resources.

However, survey respondents revealed several challenges they faced. The first was assigning risk. Respondents found it difficult from time to time to assign risk because

they sometimes lacked the information to apply criteria consistently. Respondents also reported that the process of tracking and identifying out-of-State offenders is incredibly difficult at times.

The National Criminal Justice Association, the organization I work with, conducted in-depth case studies of 4 States and their experiences implementing registration laws. We found the following impediments to notification and registration:

- **The first is dissemination of registry notification in passive notification States.** One person we interviewed in Alaska said there were questions in the community and from the public library about the wider dissemination of the information once it has been purchased lawfully.
- **Another is the impact of notification on incest victims.** I do not think this study is the first to identify that as a challenge. There is certainly concern that reporting these types of crimes would have a chilling effect because of the victim's fear of being identified when broader community notification is conducted for incest perpetrators.
- **Finally, there is concern about the accuracy of registry information.** One of our respondents from New Jersey indicated concern about the dissemination of information and keeping only accurate information in the database. The respondent also noted some trouble with vigilantism and harassment in cases where notification was provided on an unofficial level.

I want to reiterate a point made earlier. There are many issues surrounding sex offenders and the laws I discussed today that have not been fully researched. There is a limited body of empirical analysis on the efficacy of sex offender registration and notification provisions. The State of Washington, for example, conducted some empirical evaluation.

Other areas that merit study include cost and compliance issues, the issue of whether these laws can simultaneously address an offender's rights and community protection, and questions over the accessibility of information. There is a need to better coordinate the dissemination of information and best practices so we make registration and notification laws workable and implement them in concert with other policies and procedures to effectively manage sex offenders in the community.

⁹ HB 0348, Legislature of the State of Utah, 1997 General Session, (March 5, 1997) (enacted).

¹⁰ U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Sex Offender Community Notification, Research in Brief* series, by Peter Finn, Abt Associates (Washington D.C.: Government Printing Office, February 1997).

Arguments used to challenge notification laws — and the government's response

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As many of you know, sex offenders have challenged registration and community notification laws across the country. Thus far, the challenges have been to State laws. The Federal government has defended many State laws as a friend of the court, filing *amicus* briefs in cases in New Jersey, Washington, Connecticut and New York.

In these cases, registration itself seldom is a problem. Virtually every court addressing the issue has found registration to be constitutional. Community notification is more problematic. The courts also have upheld it for the most part, but some lower courts and the Kansas Supreme Court, have struck down community notification laws as violations of the U.S. Constitution. As a result, notification is still very much an open question. It will remain open until a Federal appeals court, or perhaps even the U.S. Supreme Court, addresses it.¹

¹ The four cases that were pending before the U.S. Courts of Appeals when this presentation was given have now been decided. All have held that community notification does not constitute punishment in violation of the Constitution. In the cases challenging Connecticut's administrative rule and New York's statute, the lower Federal courts had overturned the rule or statute. In both, the Second Circuit reversed the lower court, holding that the rule or statute's notification provisions did not constitute ex post facto punishment. See *Roe v. Office of Adult Probation*, 1997 WL 546244 (September 8, 1997);

I first am going to discuss the legal issues raised in cases regarding registration and notification laws. I will try to provide a picture of where the pending litigation stands and how soon cases might be resolved. In doing so, I am going to address the U.S. Supreme Court's recent decision in the *Kansas v. Hendricks* case,² which applied some

Doe v. Pataki, 120 F.3rd 1263 (2nd Cir. 1997), *reh. denied*, September 25, 1997. Note that, although the Connecticut case dealt only with the administrative law and not Connecticut's statute, the court did mention the statute and there is some indication that the decision will end up precluding challenges to the statute itself. In the cases challenging the New Jersey and Washington statutes, the lower Federal court had upheld the statute. The Third and Ninth Circuits affirmed those decisions, holding that the notification provisions did not constitute ex post facto punishment. The Ninth Circuit also held that Washington's notification provisions did not constitute punishment under the Double Jeopardy Clause, and did not violate the offenders' rights to privacy or due process. See *E.B. v. Verneiro*, 119 F3rd 1077 (3rd Cir. 1997) *reh. denied*, September 17, 1997; *Stearns v. Gregoire*, 1997 WL 539074 (September 4, 1997). Rehearing petitions are pending in *Roe* and *Stearns*.

² *Kansas v. Hendricks*, 117 S. Ct. 2072 (1997). In a June 23, 1997, decision, the U.S. Supreme Court upheld a portion of Kansas' Sexually Violent Predator Act that allows the civil commitment of individuals who have finished their prison terms for sex

standards we think will be very helpful in the notification context, although the decision dealt with a civil commitment statute rather than a community notification law.

Litigating sex offenders usually raise three primary Federal constitutional claims. State law claims are also raised, but because they are particular to the individual State, I am not going to discuss them. Constitutional claims center on three arguments:

- The first claim is punishment. Sex offenders contend that community notification laws impose additional punishment after the fact, on top of the punishment already imposed by their criminal sentences and that this punishment is excessively harsh.
- The second claim is privacy. Sex offenders contend that community notification invades their constitutional right to privacy.
- The third claim is due process. Offenders claim the laws violate their right to due process.

I will take each of them in turn and try to explain the arguments made for and against the laws.

The issue of punishment

Punishment is the most frequent claim brought in these cases. In order to prove many constitutional claims, including ex post facto (retroactivity) and double jeopardy, an offender has to prove that the

offenses but who are determined to still constitute a threat to the public.

law actually imposes punishment. A sex offender typically contends that, if the public is informed about his crimes and convictions, he is going to be subject to public ridicule, shaming, ostracism, job discrimination and housing discrimination. Typically he will point to a few prominently reported incidents of harassment or vigilantism. He will say he cannot protect himself or his family against these threats. Offenders also claim notification is going to prevent them getting a fresh start in the community. They argue that all these factors put together constitute punishment that the State is imposing upon them for their crime.

State and Federal governments make several different arguments in response. First, they point out that notification acts actually are intended and designed for public protection, not for punishment. In fact, community notification does no more than provide the information necessary to make the public and vulnerable individuals aware of the potential danger posed by sex offenders and let them know how to protect themselves and their families.

Second, the government points out that sex offender information, such as an offender's name, address and convictions, is already a matter of public record, or at least is publicly observable information. The government argues that any shame, ridicule or ostracism the offender may experience is the result of the offender's own act in committing the crime and being convicted in the first place, not the result of State notification and dissemination of public information about the crime and the conviction.

Third, the States and the Federal government argue that the laws are not intended to operate against or to punish, ridicule or instigate illegal acts against the offender. Illegal acts actually are quite rare and

cannot be attributed to the type of community notification laws that exist in many States. In fact, most State programs are tied to a determination of public safety necessity based on the likely danger that the offender poses to the public. Information usually is given out with caution as to its proper use.

The State makes clear that the information is not to be used for illegal purposes. The State might even warn the public that illegal acts will be prosecuted and that they could undermine the effectiveness of the notification laws. New Jersey, for example, issues these types of warnings along with notification.

Washington holds community meetings to address some of these issues. I would be very interested to know what other States are doing to deal with the threat of vigilantism or harassment in notification.

Finally, the likelihood of vigilantism will decrease as notification becomes more common and as we begin to understand how this process works.

The issue of privacy

The second issue sex offenders raise is privacy. They often claim that, when the community becomes aware of the offender's crime, the offender is going to lose his ability to recede into anonymity and to get a fresh start. State and Federal governments respond that this is not a constitutionally protected privacy interest. In fact, the Constitution points the other way, they argue.

Criminal convictions are the result of a public trial. There are certain constitutional guarantees associated with the public trial for both the accused and for the public. But there is no constitutional provision that guarantees a convicted offender the right to conceal or erase the fact of his conviction or the facts of the crime,

or to prevent the State from using the information for public safety purposes.

Aside from the Federal Constitution, not even common law recognizes a privacy interest in the type of information States disseminate under notification laws, because it is public record information already exposed to public view. Furthermore, even if there were a constitutional privacy right in this type of information, it would be limited because privacy rights involve a balancing test. One would balance the public interest in protecting victims or potential victims and in having the public information available against the offender's right to anonymity in these circumstances.

The issue of due process

The third claim that is raised is due process. The Constitution guarantees individuals the right to due process of law when the State threatens to take away an interest in life, liberty or property. Sex offenders often contend that community notification infringes on their liberty interest and, therefore, it cannot be imposed without extensive, trial-like procedures.

The State and Federal government respond that there is no liberty interest involved in community notification. The laws provide information only. They do not impose any restraint on the offender. True, an offender has to register under the registration laws, but uniform registration has not been found to be a restraint or to affect liberty interests. It is like registering to vote or registering a car. Offenders contend that, as a result of community notification, they will be shunned and avoided and denied jobs and places to live. That is not a State-imposed restraint on liberty because these things are not requirements of or the intent of notification laws. To

the extent that such things even occur, they are the normal societal consequences of committing a heinous crime.

In fact, numerous cases, starting with a 1976 Supreme Court case,³ have held that simply labeling a person a "criminal" or making statements that a person committed a particular crime does not infringe on a constitutional right, even if the information is not true and even if third parties rely on the information to refuse to employ or rent a residence to that person.

Finally, as with the privacy claim, even if there were a constitutional liberty interest involved, there would be a balancing test. One would balance public interest against the offender's interest. Meeting the due process requirements of the Constitution can be very minimal. It could constitute a notice to the offender informing him that notification is going to take place and giving him the right to present objections.

These offenders have been convicted of violent sex offenses. There is a proven statistical correlation between sex offense convictions and future likelihood to commit sex crimes. The State has a very strong interest in protecting children and other potential victims from these crimes. On the other hand, the offender's right to conceal his public record information is minimal, assuming it even exists. Minimal due process procedures may very well be enough, even if there is a due process claim in the first place.

Pending litigation

Now that we better understand the issues raised by litigation, we should examine the current status of pending litigation. Right now, decisions are expected any day in four cases pending in Federal

appeal courts. Two cases involve the Washington and New Jersey community notification laws, both of which were upheld by State supreme courts and lower Federal courts. The other two involve a New York community notification law and a Connecticut probation office community notification policy, both of which were struck down by lower Federal courts.⁴

Hopefully, decisions in these four cases will clarify the standards to be applied in these cases and the constitutionality of community notification laws in general. Until now, there have been many cases in State courts and in lower Federal courts dealing with Federal constitutional questions, but decisions have been a mixed bag. Cases on appeal resulted in split decisions for notification laws. The Supreme Courts of Washington State and New Jersey upheld sex offender notification laws; Massachusetts' highest court approved that State's community notification law in an advisory opinion. The Kansas Supreme Court struck down the Kansas notification law last year. There are cases pending in a variety of other States. The cases become especially confusing when you consider that we are dealing with very different, specific laws in each State.

The offenders who challenge the laws also come from different positions. Some were convicted or committed their crimes before the notification law was passed. Others committed their crimes after the law passed. They are placed in different situations and make slightly different claims, although they use the same basic arguments we talked about earlier.

The Federal appeal courts' decisions on the Federal

Constitution questions will be the most influential. Depending on what decisions are reached, this issue may well end up before the U.S. Supreme Court.

Hendricks case issues

Earlier, I mentioned the Supreme Court's recent decision in the *Hendricks* case. The Supreme Court just last month upheld a portion of Kansas' Sexually Violent Predator Act which provided for the involuntary civil commitment of sexually violent predators who finished serving their criminal sentence but were determined to be likely to strike again. This is not a community notification case, obviously, but it does have some import to the cases we are interested in today. The court held that the civil commitment law was a valid remedial law and was not criminal punishment, even though it meant that these people could be confined to a secure psychiatric facility indefinitely or for the rest of their lives.

There are several issues in this case that are helpful for our purposes. First, if the Supreme Court can uphold as valid and non-punitive the potential lifetime incarceration of sex offenders based on a prediction of future dangerousness, it is hard to imagine that the Court would have a problem with laws that simply provide public record information on sex offenders who are at large in the community. We believe that, after *Hendricks*, courts should have no trouble finding community notification laws to be non-punitive.

Second, the court in the *Hendricks* decision rejected virtually every argument raised by offenders who attack community notification laws. They found that the civil commitment law had a public safety purpose, that it was not intended to exact retribution,

³ *Paul v. Davis*, 424 U.S. 693 (1976).

⁴ The Second Circuit reversed the lower court in both instances. See Footnote 1.

and that the Court specifically approved the use of past criminal conduct to predict future danger. The Supreme Court also rejected the argument that disagreement among experts about whether sex offenders can be rehabilitated should keep legislators from acting on this matter.

Finally, on a more legalistic note, the court clarified the standard to be used for determining whether something is criminal punishment. The court ruled that you must first look at a law's intent. Is the intent of the law punitive or is it for public safety? If the legislature's intent is not punitive, the law would be presumed valid unless the sex offender can show by clearest proof that its purpose or effect is, in fact, so punitive as to negate the intent. That is a very hard standard to meet.

I mentioned that the four currently pending cases should probably apply that standard. We believe it is the appropriate standard to determining whether community notification laws are valid. One Federal district court in New Jersey already applied the *Hendricks* standard to uphold New Jersey's community notification law against a challenge from offenders who actually committed crimes after the law's effective date. That is an unpublished opinion, but we still think it is quite informative.

That brings me to my last point. If you take anything from what I have talked about today, you should take this: The most important thread running through the litigation is the issue of public safety. It shows up time and time again in how the courts view community notification laws. In fact, the Federal law dealing with notification mandates the States to provide notification when there is a public safety need.

Courts in general seem much more likely to uphold community notification statutes that show a clear reliance on a finding of public safety necessity and an attempt to tie notification to the public benefit. When that is apparent in statutes and methods used to determine when to notify, how much to notify and whom to notify, the courts seem more deferential to States and less likely to impose restrictions.

Conversely, where public safety concerns do not appear to be the guiding factor, courts are more likely to be open to considering the harm to the offender and are less inclined to uphold the laws. For example, the Kansas Supreme Court struck down the Kansas notification statute last year because it provided open access to sex offender registries, listed all persons convicted of "sexually motivated crimes," and made the information available to anyone with no warning, no finding of public safety necessity, and no limits on its use.

Kansas seems to be at one end of the spectrum in terms of what they do with notification. Other States like New Jersey, Washington and New York have tiers of offenders, formalized assessments of likelihood to re-offend, and procedures for determining when and how to notify. New Jersey also provides extensive procedures for judicial review prior to notification. That is a matter of New Jersey State law and would not necessarily carry over to other States. It was not found to be a Federal constitutional requirement; it was a New Jersey State law requirement.

At this point, it is impossible to tell whether one type of notification law is more likely to survive constitutional challenge than any other. Hopefully this notification issue will become a bit clearer in the near future.

Status of Federal legislation on sex offenders and changes to current laws

ROBERT R. BELAIR
General Counsel
SEARCH

I am going to be very brief today, because I am going to talk about new Federal legislation to amend the Jacob Wetterling Act, legislation which is fairly straightforward.

House Resolution 1683 was recently introduced by Rep. Bill McCollum. The bill has already been reported out of his Crime Subcommittee, and a hearing on the bill is expected soon by the full House Judiciary Committee.¹

A companion bill, Senate Bill 767, was introduced by Sen. Judd Gregg, chairman of the Appropriations Subcommittee on Commerce, Justice and State. The bill was attached last week to Sen. Gregg's appropriations bill, which surprised a great many of us. I am told by Sen. Gregg's staff that they intend to take the legislation through to the full Senate Appropriations Committee, and on through to the Senate floor.²

¹ H.R. 1683, titled the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Improvement Act of 1997, was introduced May 20, 1997, by U.S. Rep. Bill McCollum (R-Florida). The resolution amends the Violent Crime Control and Law Enforcement Act of 1994 to clarify certain portions relating to sex offender registration requirements. The House passed H.R. 1683 on Sept. 23, 1997, and sent it to the Senate.

² S.B. 767 carries the same title as H.R. 1683, and was introduced by U.S. Sen. Judd Gregg (R-New Hampshire) on the same day. It was referred to the Senate Judiciary Committee. It amends the Violent Crime Control and Law

Enforcement Act of 1994 in the same manner as H.R. 1683.

On the other side, Rep. McCollum is chairman of the House Subcommittee on Crime. He is a very powerful and influential member of the Judiciary Committee. Sen. Gregg and Rep. McCollum are the right sponsors for this legislation. New Hampshire had problems with its registration and notification laws, so the State went to Sen. Gregg. Florida had problems, so it went to Rep. McCollum. Texas has had problems, as have a number of other States.

I have noticed during my 20-plus years as a legislative lawyer that it is always very important for a bill's prospects when there is no opposition. That is an inside tip. There is, to my knowledge, no opposition at this point to these bills. I think the bills are going to become law. The Senate passed similar legislation during the 104th Congress. I think the means by which that legislation becomes law are still up in the air. I do believe the current bills will become law.

Four major purposes

There are four major purposes to these bills.

First, they enhance flexibility for State registration systems, allowing registration reporting to be done concurrently. They provide flexibility in address verification, relaxing slightly some of the deadlines for offenders to report when they leave prison, although they still use the word "prompt."

Second, they follow procedures outlined in the proposed U.S. Department of Justice guidelines relating to military and Federal sex offenders. If they do become law, they will assure that State registration systems identify and track Federal and military sex offenders. That is probably the biggest, most important change these laws would bring.

(The guidelines encourage the States to keep track of military and Federal sex offenders. These bills require that those offenders report through the military or through the Federal correctional prison agencies. They do not require the State registration systems to keep track of them, but the momentum seems to be pointing in that direction.)

Third, the bills improve registration and tracking of sex offenders who live in one State but who work or go to school in another State. That is part of the law now. It is addressed in the guidelines as well for clarity, but the bills provide further clarification. The bills define "employment" and "going to school." To some extent, I think you can say they improve the congruence between State and Federal registration or database programs. They certainly give the States a little bit more flexibility in the reporting. They do not otherwise amend the Lychner Act or provide some of the remedies that the FBI indicated eventually may be necessary, maybe sooner than later.

Another important purpose of the legislation is to help States do a better job keeping track of probationers and parolees who are sex offenders. The bills hope to do this — and this is very important — without requiring yet another round of State law. Obviously, through the Wetterling Act, Megan's Law and the Lychner Act, there has been a fair amount of pressure on the State legislatures.

Specific changes

The bills will initiate specific changes. One has to do with the controversial issue of sexually violent predator determinations. These bills would allow the Attorney General to waive the State board requirement, provided that there is an adequate process in place. They do provide a bit more flexibility in this area.

The bills also give States more flexibility in advising offenders of their registration duties and obtaining initial registration information to report. At present, these tasks must be performed by a court or by a State prison official. This legislation would allow designated State agencies, the court or other responsible officials to carry out those duties. Again, some of these concerns and issues were addressed by the guidelines.

As I mentioned, Federal and military offender reporting is the biggest issue. The bills bring them under the law. That has always been the spirit of the original law, but there has been a gap. These bills would require the Secretary of Defense to establish a registration and notification system similar to the one used by the States. For those of us who have long watched and worked on information system issues, it is going to be fascinating to see whether the military can respond to this requirement in an effective way.

I do not believe the military has commented on this legislation. I cannot imagine that it would be opposed to this requirement. On the other hand, those of us who have looked at the three military systems — one used by the Navy and Marines, another by the Army and the third by the Air Force — know that those systems do compare to the kinds of systems in terms of capability, accuracy and completeness that are now available on the adult civilian side. I should add that even though these bills are fairly far along in the legislative process, they are still very much works in progress.

Concurrent registration is addressed in the pending legislation, which also provides more flexibility in how registration can occur. Address verification, which has been a big issue, is addressed very effectively in the guidelines and is further addressed in the bills. An individual required to register as a sex offender could use a walk-in system to return an address verification form rather than mailing it in.

The bills use the term "promptly," as opposed to the existing laws, which prescribe set periods of time for offenders to register once released from prison. They extend law enforcement immunity provisions to good-faith conduct if a particular agency assigns related work to an independent contractor. In an era of increased outsourcing and privatization, that is obviously very important.

There are a couple of other provisions I did not mention. The bill would prohibit the sale or exchange of sex offender information for profit. I think we are all aware of the various kinds of services on the Internet and others that harvest public record information, court records and other types of public record information, and make those records available for profit. These bills would prohibit that.

They also have provisions for dealing with the registration of State probationers and parolees, and they amend penalty provisions to permit extradition in cases involving parolees or probationers who move to different States and then fail to register.

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Panel of the States: Systems for the registration of sex offenders

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Review of the New York State Sex Offender Registration Act

FLOYD EPPS

*Member, Board of Examiners of Sex Offenders
State of New York*

Ms. Kathy Canestrini and I are going to discuss certain aspects of the New York State Sex Offender Registration Act.¹ Specifically, we are going to discuss our risk assessment process and the role of the State's Board of Examiners of Sex Offenders.

The following is some background information about the New York State Sex Offender Registration Act. In July 1995, the New York State Legislature passed, and Gov. George Pataki signed into law, the New York State Sex Offender Registration Act, more commonly known in the New York area as "Megan's Law."

The law, which became effective January 21, 1996, is consistent with the Jacob Wetterling Act, including the requirement for sex offenders to register and to provide information about themselves to the State. It also provides that a Board of Examiners of Sex Offenders be established. The board's primary function is to provide the sentencing court with a recommended level of risk that an offender poses to the public.

On January 21, 1996, Gov. Pataki officially appointed a five-member Board of Examiners of Sex Offenders. Board members are experienced in the fields of treatment, supervision, research and the prosecution of sex offenders. Ms. Canestrini and I are

members of the board. The board's role, as defined by the statute, is to develop guidelines and procedures to assess risk levels based on two factors: the likelihood of reoffense and the threat the offender poses to the public if he reoffends. The Board of Examiners is responsible for reviewing and making risk-level recommendations for all offenders being released from prisons and local jails.

There are currently more than 5,000 offenders in the New York State Registry. The board assisted in assessing the retro-pool of offenders. Included in the retro-pool are offenders who were on parole or probation on January 21, 1996. The board's main objective is to review cases of offenders released from State corrections and local jails. We assess those cases on a continuous basis.

There are three levels of risk in New York. Level 1 is the lowest and Level 3 is the highest. Ms. Canestrini will discuss how we determine risk levels. I am going to give you the floor plan of what we do, and she is going to build the house, so you will see and understand the process very clearly.

Risk level is used in New York to determine the frequency and duration of registration and the amount of community notification that can be provided to the public. The levels are as follows:

- A Level 1 offender is required to register annually for a period of 10 years. The only information we dispense on a Level 1 offender is affirmation that he is listed in the registry;

no other information can be given out on the offender.

- Level 2 offenders are required to register for a period of 10 years, and we can release more information about the offender to the public — such as the crime of conviction, his modus operandi and the targeted victims. The only information we cannot release on a Level 2 offender is his exact address.
- Level 3, or high-risk, offenders are required to register annually for a minimum of 10 years and, possibly, for life. These offenders are required to register with local police every 90 days. All information on Level 3 offenders, including exact address, can be distributed to the public.

The Sex Offender Registration Act created three procedures for informing the public of the presence of sex offenders in the community. One, it authorized local law enforcement to dispense information. Two, it established a 900-prefix number the public can telephone to inquire whether a sex offender is listed in the registry. Three, it called for the distribution of a high-risk offender subdirectory to law enforcement agencies.

The Board of Examiners' review process begins approximately 120 days prior to the offender's release from incarceration. The offender's case record is forwarded to the board at that time. The case record includes all relevant information concerning the presentence investigation, the offender's criminal history or rap sheet, an institution summary and a

¹ S. 11-B, 218th Legislature of the State of New York (Chapter 192 of the Laws of 1995). Signed by the governor July 25, 1995. Effective January 21, 1996.

statement from the offender's victim(s).

There are times the board solicits additional information from the court, probation departments, parole officers, district attorney's offices, State police, local police, and any other division or department that will enable us to provide the most thorough risk assessment possible to the sentencing court. According to the statute, each case must be reviewed by three board members, and each review is conducted independently of the other reviewers.

When we come to a risk-level consensus, the primary or first reviewer is responsible for preparing a case summary supporting the assessment we provide to the court.

Within 60 days of the offender's release, the assessment recommendation is forwarded to the sentencing court with the summary that sustains the number of points we assess to this sex offender, including all information we obtained in order to do our risk assessment. To date, the courts have sustained the board's recommendation in more than 85 percent of our cases.

Thirty days prior to the offender's release, the court notifies and provides the offender the opportunity to be heard. The court also notifies and advises the offender of his right to counsel and all of his other rights. Finally, after completion of this entire process, the offender is informed of his registration responsibilities and obligations just prior to being released.

This has been a brief synopsis of everything we do. It is our floor plan and blueprint. Ms. Canestrini will discuss the specifics of the statistics we have concerning our risk assessment process.

The method of risk assessment used for the New York State Sex Offender Registration Act

KATHY CANESTRINI

*Member, Board of Examiners of Sex Offenders
State of New York*

With the passage of the New York State Sex Offender Registration Act in 1995, the State of New York adopted an individual review process for determining sex offender risk levels, as opposed to using a "per se" rule in which the conviction crime determines a person's risk level. The Act specified that a number of items should be considered in the risk assessment process.

The Board of Examiners of Sex Offenders elected to develop an objective instrument and associated guidelines to measure risk using these specified factors. The risk assessment instrument and guidelines were developed under the direction of Mr. Paul Shechtman, former director of criminal justice services in New York State, and with the assistance of Ms. Kim English, Director of Research, Division of Criminal Justice, Colorado Department of Public Safety.

The New York State Board of Examiners of Sex Offenders, created by our State's sex offender registration act, is primarily responsible for reviewing the cases of persons released from State incarceration or from definite local terms after serving time for sex offenses.¹ From the time the act was implemented on January 21,

1996, through June 13, 1997, the board has reviewed 1,540 cases. We typically review approximately 100 cases per month.

Slightly more than half of the 1,540 offenders, or 52 percent of the cases reviewed by the board, resulted in a Level 3 risk assessment, the highest level of risk for committing another sex offense. Thirty-nine percent of the assessments resulted in a Level 2 recommendation, or that of moderate risk. The remaining 9 percent of the cases resulted in a Level 1 recommendation, or the lowest level of risk. The board arrives at the risk-level recommendations by applying the risk assessment instrument and associated guidelines.

The risk assessment instrument covers four basic categories: current offense, criminal history, post-offense behavior and release environment. The board utilizes a numeric scoring system that takes a number of factors into account. There is also an "override" category that allows the board to abandon the numeric system in certain instances, and a "departure" section that takes mitigating factors into consideration. I would like to discuss the override category first.

Override factors

The assessment instrument considers four factors that override the numeric system and result in an automatic Level 3 risk designation.

Prior Felony Convictions. The first override factor is if the offender had a prior felony conviction for a sex crime prior to

the offense we are currently reviewing.

Injury or Death. The second override factor is if the offender inflicted serious physical injury or caused the victim's death. (I consistently refer to offenders as men because women constitute less than 1 percent of our offenders.)

Threats. The third override factor is if the offender made recent threats that he will commit another sexual or violent crime.

Offender Abnormality. The fourth override factor is if a clinical assessment determined that the offender has a psychological, physical or organic abnormality that interferes with his ability to control impulsive sexual behavior.

To date, the board has only used the first two override categories.

Of the 1,540 cases we have reviewed to date, 9 percent resulted in a Level 3 risk assessment based on override factors. In the remaining 90 percent of the cases, we used a risk assessment scoring system in which we considered a number of individual items reported in academic literature as predictive of sexual reoffending or dangerousness.

Each individual item in the numeric scoring system is added together to produce an aggregate total score ranging from 0 to 300 points. A score of 0 to 70 points results in a presumptive recommendation for the offender of Risk-level 1. A score of 75 to 105 points results in a Risk-level 2 recommendation. A score of 110 to 300 points results in a Risk-level 3 recommendation.

¹ S. 11-B, 218th Legislature of the State of New York (Chapter 192 of the Laws of 1995). Signed by the governor July 25, 1995. Effective January 21, 1996.

Scoring system categories

The scoring system covers four general categories. The first looks at the current offense and considers various factors which describe the nature of the current crime. The second category looks at the offender's criminal history. The third category looks at his post-offense behavior. The final general category looks at the release environment.

— Current offense

Under the first general category of current offense, we consider seven specific items.

Violence. The first is the use of violence during the commission of the crime. Ten points are assessed if the offender used forcible compulsion during offense, and 15 points are assigned if the offender inflicted physical injury. Thirty points are assigned if the offender was armed with a weapon during the crime. To date, approximately 20 percent of the offenses involve the use of a weapon. When a weapon was used, the victim was almost always an adult.

Intrusiveness of Contact. The second item we consider is the intrusiveness of the sexual contact. Five points are assessed if the contact occurred over clothing. Ten points are assessed if the contact was under clothing. Twenty-five points are assessed if the sexual contact involved intercourse, sodomy or aggravated sexual abuse. Eight out of every 10 cases the board has reviewed involved vaginal intercourse, oral sodomy, anal sodomy, or aggravated sexual abuse which requires a standard of physical injury.

Multiple Victims. The third item we consider is evidence of multiple victims in the crime. Zero points are assessed if there is one victim. Twenty points are assessed if there were 2 victims, and 30 points are assessed if there were 3 or more victims involved in the

offense. Approximately 20 percent of the reviewed cases involved multiple victims in the current crime being reviewed by the board. When there are multiple victims, the victims are almost always children.

Frequency. The fourth item we consider is the frequency of the sexual misconduct. Did it happen on more than one occasion? Twenty points are assessed if there is evidence of a continuing course of sexual assault against the victim. Approximately one-third of the cases involved more than one sexual assault, and some of the crimes involved abuses that occurred over a period of several years. Again, when this item is scored, the victims are almost always children.

Victim Age. The fifth category looks at the age of the victim or victims. Twenty points are assessed if the victim is between the ages of 11 and 16. Thirty points are assessed if the victim is age 10 or younger or older than age 62. Victims' ages have ranged from a low of just a few days old to a high of 85 years old. Sixty-five percent of the victims were under age 17, and 35 percent were age 10 or younger. This is consistent with most of the information we have been presented with at this conference.

Victim Helplessness. In item six, 20 points are assessed if the victim was either physically or mentally helpless. This would include unconsciousness due to alcohol consumption or sleep or if the victim was physically helpless, for example, by confinement to a wheelchair. Only 5 percent of the offenders have been scored under this category.

Relationship. The seventh specific item we consider is the relationship between the offender and the victim. Twenty points are assessed if the offender was a stranger to the victim or if the

relationship was promoted for the primary purpose of victimization. In this category, we also consider whether a professional relationship was used to gain access and to abuse the victim, for example by a teacher, a priest or a doctor.

Thirty-five percent of the offenders were scored under this category primarily as strangers to the victim. I should emphasize that 65 percent of the offenders were not scored under this category, which obviously indicates that most victims knew their offenders.

— Criminal history

The second general category of the risk assessment instrument is criminal history, which examines the age at which the offender committed his first sex crime, his prior criminal history, his most recent commission of a felony offense prior to his current conviction, and his substance abuse history.

Age at First Offense. Ten points are assessed if the offender was convicted or adjudicated of his first sexual crime before he reached age 21. Approximately one-quarter of our population falls into this category.

Prior Criminal History. The next focus area is prior criminal convictions or adjudications. Thirty points are assessed if there was a prior misdemeanor sex crime conviction, a prior charge of endangering the welfare of a child, or a prior violent felony offense. Fifteen points are assessed for a nonviolent felony, and five points are assessed for a nonsexual misdemeanor conviction. Using this category and the information gained from the override category, a striking 31 percent of offenders had prior convictions for sex crimes or violent felony offenses.

We score 10 points if the previous sexual crime or felony conviction occurred within 3 years of the current conviction. If the

offender was incarcerated for a portion of the previous 3 years, we do not consider that period during our examination of his history. Approximately one-quarter of the offenders had a prior felony or sex crime conviction within 3 years of perpetrating the current offense.

Substance Abuse History.

Drug and alcohol use is highly associated with sexual offending. We score 15 points if an offender has either a substance abuse history or if he was using drugs or alcohol at the time of the current offense. Six out of every 10 of our offenders fell within this category.

— Post-offense behavior

The next general item on the risk assessment instrument looks at post-offense behavior. We consider two different factors under this category. First, we examine the offender's acceptance of responsibility. Second, we look at the offender's conduct while confined or supervised.

Offenders who deny, minimize or mitigate their behavior are poor prospects for rehabilitation. Ten points are assigned if they fall into this category. Fifteen points are assigned if the offender refuses treatment or if he has been expelled from treatment. To date, approximately one-third of our offenders were either removed from a treatment program or refused to participate in a sex offender program.

The second specific issue in this general category is conduct while confined. Ten points are assessed if an incarcerated offender has incurred a serious disciplinary infraction while incarcerated. This would include such offenses as assaulting a guard or another inmate or possessing drugs or a weapon. Twenty points are assessed if there was a sexual misconduct offense, such as sexually assaulting another inmate or writing sexually suggestive

materials to a staff person. To date, 20 percent of the offenders were assessed as having a serious disciplinary infraction, and another 5 percent committed sexual misbehavior.

— Release environment

The final general category we consider is release environment. Two factors are taken into account in this category. We examine the supervision the offender is going to receive and the living and employment situations that await him. The board focuses on the supervision category because, when we are conducting our review, the living and employment situations are typically not established.

Zero points are assessed if the offender is released to a specialized parole caseload. Five points are assessed if he is released to parole supervision without the benefit of a specialized caseload. Fifteen points are assessed if the offender reached the maximum expiration date of his sentence and he was being released into the community without supervision. Approximately 65 percent of our offenders are released to a specialized parole caseload. It is noteworthy that 11 percent of our offenders are released at their maximum sentence expiration date into the community with no supervision.

Departure section

I spoke previously about a departure section in our risk assessment instrument. This section is premised on the recognition that an objective instrument, no matter how well designed, will not fully capture the nuances of every case.

After the presumptive risk level is determined based on the scoring system, the case is reviewed to determine if a departure is warranted. A departure can send the risk-level assessment either to a higher or lower level.

To date, the board has only departed in about 11 percent of the cases. These departures have been distributed equally between raising or lowering the assessment level. We provide justification to the court when we do depart. Typically, an item not already considered by the assessment instrument justifies the departure. It can be a mitigating factor, such as a victim's lack of consent based solely on inability to consent because of the victim's age, or it can be a recognition that the offender has made exceptional progress and has participated in a treatment program. Aggravating factors include multiple convictions for prior misdemeanor sex crimes or the use of pornography or sexual devices that were not captured by the assessment instrument.

I would like to end with a quote that I came across recently. I thought it was very striking, primarily because it was written 50 years ago. "The most rapidly increasing type of crime is that perpetrated by degenerate sex offenders. Latest figures show that while the number of crimes is diminishing, the number of sex crimes continues to increase." That was a quote from the FBI director cited in *American Magazine* in 1947.

California's history of sex offender registration requirements and response to new Federal mandates

DOUG SMITH

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I would like to review the history of California's sex offender registration requirements and our State's response to recent Federal mandates requiring States to strengthen their laws dealing with sex offenders.

History

California enacted a registration requirement for convicted sex offenders in 1947.¹ The number of sex offenses that resulted in a registration requirement generally expanded over the years, but the actual registration and record-keeping processes remained about the same.

A notable change occurred in 1986 when juveniles were included in the registration requirements, although their registration process is somewhat different than that used for adults. Generally speaking, convicted adult sex offenders must register for life.

Offenses requiring registration are consistent with Federal requirements. The number of individuals required to register grew steadily for the first 40 years to about 70,000. More than 10,000 subjects were then purged when two misdemeanors — lewd conduct and indecent exposure — were reclassified as nonregisterable offenses. The renewed focus on sex offenders in the 1990s has pushed the number of individuals required to register above 75,000.

¹ Statutes of 1947, c. 1124

Registration Improvements

The Attorney General established an enforcement arm of the Sexual Habitual Offender Program under the Thompson-Presley Violent Crime Information, Investigation and Technology Act of 1994.² The Attorney General also established a computer system to enable law enforcement officers throughout the State — from street patrol to detectives — to share critical information about known offenders and unsolved crimes. Funding and policy direction provided by the Technology Act resulted in the following accomplishments:

- The Nation's first automated system for DNA and RFLP analysis was created. California took the lead in developing the next generation of genetic markers for law enforcement. To date, more than 34,000 convicted offender samples have been analyzed and entered into the data bank.
- The records of 65,000 sex offender records were reviewed and updated.
- Sex offender and arsonist registration information was made accessible to local law enforcement authorities through the Violent Crime Information Network (VCIN)³

² Statutes of 1993-94, 1st Ex. Sess., C.6 (S.B. 12).

³ The VCIN provides a communication doorway for State and local law enforcement. VCIN contains

via the California Law Enforcement Telecommunications Systems (CLETS).

- Sexual Predator Apprehension Teams were established in San Francisco, Fresno and Los Angeles. The teams augmented the Behavioral Profile Section of the California Department of Justice.
- Supervised Release Files were activated on-line with CLETS, making it possible for a patrol officer to determine an individual's release status when checking for "wants and warrants."

information on career criminals, parolees, probationers, people missing under suspicious circumstances, registered and habitual sex offenders, registered arsonists and violent offenders. A specialized crime analysis unit provides VCIN information from the investigation of unsolved, violent crimes. With one call, an investigator can reach specialists who access the network. VCIN will eventually be available to investigators at their own workstations. In Phase I of VCIN, missing-person case files are provided; the California Department of Justice has the ability to scan, store and retrieve photographs; sex and arson offender and supervised release information are available via CLETS; and sex and arson offender registration and supervised release information is available through the network.

- The driver license and vehicle registration files of sex offender registrants were flagged to keep authorities informed of address changes, vehicle information and personal data.

Registration updates, inquiries

Historically, sex offender registration has been a fingerprint-based manual record process initiated by the local law enforcement agency with jurisdiction over the registrant's place of residence. Address changes and other updates were submitted to the California Department of Justice (DOJ) for central record maintenance. VCIN implementation made the process much faster and less redundant. VCIN provides more useful and current information. Local law enforcement agencies can enter information directly into VCIN. The DOJ still conducts fingerprint comparisons and continues to centralize verification of registration requirements, but initial entry and updates can be done remotely.

VCIN can provide information about registrants when routine inquiries are made. More importantly, an inquiry into the Wanted Persons System (WPS) automatically connects to the Supervised Release File (SRF) where the sex registrations are filed. The individual making the inquiry is provided with information on the registration requirement along with any warrants, probation, parole or violent criminal notification. Contact information can be noted in the file, which also works to track notification in response to Megan's Law.

Current data

Today, more than 77,000 Californians are required to register

as sex offenders. The volume of new registrants is approximately 3,000 per year. Ninety-nine percent of those required to register are male. This equates to about 1 in every 150 adult males in California. Juveniles comprise only about 1 percent of the sex offender file.

To meet the requirements of our State's Megan's Law, we have designated 1,617 of these offenders as "high-risk" and 62,303 as "serious offenders." The names of these individuals and other pertinent data about them are included in the CD-ROM and fall into the proactive notification categories for law enforcement agencies.

The 13,000 registrants not subject to Megan's Law requirements are included in our "other" category, which includes those convicted of indecent exposure, spousal rape and possession of illegal pornography. Approximately 7,000 of the 77,000 offenders who are required to register have never registered. In addition, we estimate that the address information on currently registered sex offenders is about 75 percent accurate. We presume some of the subjects are deceased. Exposure provided by the Megan's Law CD-ROM will improve the information we currently have available.

California DOJ activated the Child Molester Identification Line in July 1995. Through a 900-prefix telephone number at a cost of \$10 or by mail-in request at a cost of \$4, the public can check whether suspected individuals are a threat to their safety or their children's safety. In addition, a hard copy binder of 892 high-risk offenders was distributed in 1996 to law enforcement agencies across the state. In 1997, the identification line was expanded to cover all the subjects who fall within the Megan's Law notification parameters.

Inquiries have been made on 13,100 subjects during the identification line's 2 years of operation. About 1,000 of these have been identified as registered sex offenders. Based on information provided by callers, these thousand registrants had access to more than 100,000 children and adults. While the estimate of the number of individuals at risk is not carefully defined, controlled or verified, the magnitude cannot be ignored. The public exposure is staggering at half or even a quarter of the number of people believed exposed.

'Megan's Law' activity

The California version of Megan's Law took effect in September 1996.⁴ All components of the law are now in place throughout the State. The most visible feature — and in some ways the easiest to implement — is the availability of the CD-ROM containing information on serious and high-risk offenders. Since July 1, 1997, members of the public can visit their local sheriff's office and many police departments throughout the State to view a CD-ROM computer disk that lists approximately 64,000 registered sex offenders in California.

This information is available at approximately 400 locations. The CD-ROMs are updated four times annually. Searches can be conducted by name, county or ZIP code. Approximately one-half of the entries include a photo of the sex offender. More photos will be included in future editions.

Megan's Law requires California to maintain a list of its 1,600-plus high-risk, "worst-of-the-worst" offenders. More than 80 percent of these high-risk offenders have their photos included on the CD-ROM. (This CD-ROM replaces

⁴ Statutes of 1996, c. 908 (AB 1562).

the Child Molester Identification Line Subdirectory distributed to law enforcement agencies in January 1996.)

In addition to giving law-abiding citizens the resources to inquire about registered sex offenders, Megan's Law also equips law enforcement with three different methods to notify the public if it is under potential threat by a registered serious sex offender. Law enforcement lacked these options prior to Megan's Law. The options are:

1. While on patrol, an officer may notify individuals whom the officer deems at risk that they are in proximity to a registered serious sex offender. For example, if an officer contacts an individual near a playground and determines that he is a registered serious offender, the officer can then tell parents in that park that their children are playing near a registered serious sex offender.
2. Local police may also warn residents, schools, churches or any other community members at risk that a registered serious sex offender resides nearby. Officers distributing fliers door-to-door with information about the individual typically accomplish this type of notification.
3. The final notification method applies to the high-risk offenders. When an offender's name is on the "worst-of-the-worst" list, local police officials may advertise his identity and whereabouts in any manner they see fit to warn the community they protect and serve.

Media interest in the sex offenders' CD-ROM has been high since its release. Public interest, while not overwhelming, appears to be increasing. Information provided to the public includes a registrant's

name, physical description, county of residence, ZIP code, the offense or offenses that lead to the registration requirement and a photo, if available.

We expect to improve the photo availability and quality because initial registration and annual updates submitted to VCIN now require that photos be included. This same CD-ROM has a law enforcement access feature that allows agencies to obtain information on all registrants, including those listed in the "other" category. Additional information is included, such as specific street address, along with the ability to search by additional elements and to create lineup cards and posters.

A task force representing police chiefs, sheriffs, peace officers and the DOJ developed model guidelines for consideration by each agency. Numerous training seminars were held throughout the State. In addition, the State Commission on Peace Officer Standards and Training produced and distributed a law enforcement training video that was telecast via satellite. Since local police are best positioned to determine what level and method of notification is appropriate for their community, the specifics of implementation are local policy matters. However, most agencies in regional areas realize that their approaches should be consistent with one another.

Pending issues

We feel we are very close to complete compliance with the Jacob Wetterling Act as amended by Megan's Law. Legislation is pending before the California Legislature to provide minor clarifications.

Schools have taken a great interest in how Megan's Law affects their operations, both in terms of responsibilities and benefits. We are working directly with the schools and the State

Department of Education to explore the best methods of protecting the school-age population and staff through a combination of criminal history checks, Megan's Law notifications, and proactive law enforcement and community involvement. The schools also play a major role in public notification.

As mentioned earlier, we have an ongoing problem locating some registrants. A national registration file will help as individuals move across State lines and are required to continue to meet basic registration requirements. A proposal currently before the California Legislature would require regular, biometric identification-based location verification for high-risk offenders on a daily, weekly or monthly basis. Individuals could also be required to confirm their location by telephone using a system currently used in some parole and probation supervision efforts. The telephone number would be pre-established for location and a voice print match would provide the biometric identification.

Public reaction to new sex offender information provided by notification via direct access or by proactive law enforcement is not clear at this time. The level of public interest and concern and how this interest is expressed will dictate the impact of the new laws.

California's laws and programs are intended for public protection and awareness. In announcing the availability of the Megan's Law CD-ROM, California Attorney General Dan Lungren stated, "Critics of Megan's Law argue that public awareness of these convicted sex offenders constitutes cruel and unusual punishment. The purpose of Megan's Law is not to further punish convicted sex offenders, but rather to empower law-abiding members of the public with information they can use to protect

themselves, their families and their neighbors."

Cooperative efforts

It was not easy for California to take the steps it did to respond to new sex offender mandates. As you can see, our system is not perfect. However, our response has been a good example of cooperation between many levels of government and how the cooperation can result in major achievements. We brought together the considerable resources of law enforcement agencies, local and State legal staff, the State legislature, the private business sector and the general public to mold an effective program for using information and resources to protect the public.

The Florida sex offender registration and notification system

DONNA M. UZZELL

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Florida Department of Law Enforcement*

I have listened to representatives of the Federal government describe their frustration in trying to incorporate the changes in registration and notification laws mandated by recent legislation. I am reminded of a story about a gentleman stopped on a Florida highway by a law enforcement officer. The officer steps up to the gentleman's vehicle and asks, "Can I please see your driver's license?"

The gentleman glares at the officer, grits his teeth and responds, "Can't you people please get organized?" The officer is taken aback. The gentleman then says to the officer, "You stopped me yesterday and took my license away. You stop me today and ask me for it. Can't you people please get organized?"

I sometimes wonder if that is what some folks say about us and our Federal partners in our State. Will you people please get organized and get these programs going? It has been a difficult task.

Sexual predator notification

Florida initiated a program in 1993 to register sexual predators. The program was changed in 1995 to add limited community notification of a sexual predator's presence via newspaper ads. The program was changed again in 1996 to allow for more broad-based community notification. During the 1997 legislative session in Florida, the Legislature passed the Public Safety Information Act,¹ which

greatly expands our sexual predator program to include other categories of sex offenders. The Act becomes effective on October 1, 1997.

Florida courts designate individuals as sexual predators based on statutory criteria. Those designated have, generally, been convicted of first-degree felonies or capital felony offenses. Individuals convicted of second-degree felonies may also be designated as sexual predators if they were convicted of other sex offenses within the past 10 years.

Florida's sexual predator statutes require the chief of police and the sheriff to notify a community of a sexual predator's presence. Changes made to the registration and notification law by the State Legislature in 1997 allow notification to be conducted in a manner deemed appropriate. The law also requires the Florida Department of Law Enforcement (FDLE) to develop a protocol on tips for community notification. We produced that protocol in 1996. We are expanding the protocol in 1997 to reflect the changes made by the Legislature.

Other provisions of our law require the FDLE to maintain a toll-free telephone number to make information available on sexual predators and sexual offenders.² Florida does not require callers to provide specific names. No one has to ask, "Is John Doe a sexual offender or sexual predator?" The majority of callers ask if there are sexual offenders in their counties.

Under our old law, when we had a stricter interpretation of the term "sex predator" based on the commission of the offense, we only had 300 to 400 people in our registry. As of October 1, 1997, with the expansion of the law to include sex offenders who have committed a broader range of offenses, there will be 10,000 offenders in the community under supervision and 7,000 who will be incarcerated as of that date. We are authorized by law to charge a reasonable fee to provide written information to persons who request photos of offenders via the toll-free line. One helpful aspect of the Public Safety Information Act is that it requires the FDLE to place sexual predators' photos and information on the Internet, so not everyone will have to obtain sex offender information over the telephone.³

Florida is a "sunshine State." Florida's records are "in the sunshine," or open for public view. I hated that during my years in law enforcement. I am beginning to love the "sunshine" laws now because they help provide answers to questions about sex offenders. We just put the information out there. Florida's courts have ruled we have the authority to do that.

The Internet: A new information tool

Florida's Internet site is entered through a World Wide Web page. The Web page offers other information about FDLE and includes a page on missing

¹ H.B. 1029 (The Public Safety Information Act), approved by the 1997 Session of the Florida Legislature, effective October 1, 1997.

² The toll-free number is 1-888-357-7332, or 1-888-FL-PREDATOR.

³ The FDLE's Web site address is: www.fdle.state.fl.us/.

children. We think that is a very important feature. Users can also "click on" or select the sexual predators' section of the Web site and obtain information that lets them know about some important qualifiers.

Positive identification is based on a fingerprint comparison, and it is illegal to use this information in the commission of a crime. You can search for offenders on our Web site by county, by city or by the offender's last name.⁴

We are planning to create separate categories for offenders who are at large, for those who are incarcerated, and for those who are out-of-State. Offenders are currently categorized by county. Some counties with large correctional facilities in their jurisdictions have an inordinate amount of offenders listed on the Internet, so we decided to create a separate category for these.

We have 67 counties in Florida. If you wanted information on offenders in Dade County, you would enter "Dade County" into the appropriate area of the Web site and find out that there are 63 registered sexual predators in the county. You can click on any one of those predators to view a thumbnail sketch. For more information on the individual, you select another option that provides the offender's photograph in a flyer format. Law enforcement agencies interested in conducting a notification procedure can print

flyers directly from the Internet to post for notification. The flyers list the date the record was last updated, the offender's address and his modus operandi.

We asked our State Legislature to change the law because the previous notification procedure identified victims in some custodial incest cases. We now report that a victim was a minor, but we do not give the victim's age.

There has been tremendous interest in our Web site. Since January 1, 1997, there have been more than 107,000 sex offender inquiries on the site. (More than 40,000 occurred during the first 3 weeks following implementation of the new sex offender laws.)

Other provisions of the Florida law require predators or offenders to update their addresses with the Department of Highway Safety and Motor Vehicles. This will be extremely important as the number of registered offenders increases. It is just too labor-intensive and cost-prohibitive to conduct separate manual data entry of sex offender information. Florida's process uses an existing telecommunications link with the Department of Highway Safety and Motor Vehicles information through which we electronically download sex offender information. This information updates our databases.

Each Florida county has an office of the Department of Highway Safety and Motor Vehicles which has the capability to take digitized photographs. Those photos will be transmitted to us as well. By midsummer 1998, the Florida Crime Information Center (FCIC) II — our version of National Crime Information Center (NCIC) 2000 — will be up and running. A local law enforcement officer conducting a criminal history check from either a communications center or a patrol car could obtain a criminal history that includes a photograph. The

photograph would be transmitted over our network and to the police officer's desk or patrol car. An offender who fails to register or report an address change could be arrested and charged with a third-degree felony.

Registration processes

A court must make the sexual predator determination. When the determination is made, the court clerk submits a fingerprint card, a photograph and the court finding to the FDLE. The FDLE enters that information into a sexual predator database, which we are now developing. This database will have historical information on address changes, photographs and the offender's modus operandi. This information is automatically uploaded into two very important sites — the Internet and the FCIC telecommunications system. In the latter, the information is placed in a "hot file" available to local law enforcement.

As part of the registration process, the State notifies any criminal justice or law enforcement agencies when predators move into their jurisdictions. The offenders' drivers' licenses and vehicle tags are "flagged" in the Department of Highway Safety and Motor Vehicles' database. Thus, when an officer makes a vehicle stop and checks an offender's driver's license or license plate, the officer is informed that a sexual offender is in his or her presence. This is how our sexual predator registration process works.

Because of changes made to Florida's law, there are some differences in the way registration is conducted for sex offenders. The Department of Corrections, which includes probation and parole officers, is required to electronically download all the information on a released sexual offender into the sexual predator database. Again, the Internet and

⁴ As of October 1, 1997, the FDLE Internet site allows sex offender searches by ZIP code. The Web site has been the method most used by the public to obtain sex offender information. In the first 3 weeks that sex offender information was available, FDLE staff responded to more than 900 requests from the public for information. The toll-free line receives from 20 to 200 calls per hour, depending on media-generated publicity.

the FCIC telecommunication system are automatically updated, and all local law enforcement agencies are notified of the release. At the time this process takes place, it actually constitutes *pre-registration* because the individual is either still incarcerated or under some other form of supervision. When offenders change their addresses while on supervision, they must notify probation and parole officials, who are required to send the information to the State. The State then forwards the new address to local law enforcement.

When offenders are released from the Department of Corrections back into the community, they can register either with local law enforcement or directly with the FDLE. Offenders are fingerprinted during registration so officials can access the Automated Fingerprint Identification System (AFIS) to double check that the right person was released from prison and is registering. The offender's fingerprint and photograph are sent to the FDLE for entry into our sexual predator database.

Hopefully, the offender will have served some time in the care, custody and control of corrections so we will already have his photograph and basic information. When the State receives the new registration information, we again check the fingerprint with the AFIS just to make sure the person is who we believe he is and that all other information currently in our database is correct.

Keeping track of offender addresses

We update and amend the records as needed. The Internet and the FCIC telecommunications system are automatically updated and our agencies are notified by fax service. We tell the service what county the offender will be living in, and the service faxes the information to every appropriate

law enforcement agency. Again, we flag the offender's driver's license and vehicle registration.

This is very important, because it alerts the proper authorities when the offender goes to the Department of Highway Safety and Motor Vehicles office to change his address. Any offender who does not have a driver's license or who has his driver's license taken away is required to obtain a Florida identification card, which is administered through the same department. Any change of address will be electronically transferred to the appropriate databases and local authorities.

I do not know how many of you have experience with sex offenders' address changes, but these people do not buy houses and live in them for 30 years. When our sexual predator registry contained only 300 to 400 people, we had some registrants with 3 to 5 address changes.

The FDLE also provides press releases for community notification. Every time we are notified of address changes, our public information officers around the State send press releases to community newspapers reporting that sex offenders are living in certain communities or have been placed in certain communities. The newspapers use their own discretion to determine whether they are going to print the information.

Some newspapers avoid using the information totally. Others take advantage of the information and print some form of notification. The press is the most effective method to ensure that offender information is current and correct. The minute information is transmitted on the Internet and included in a press release, reporters are out knocking on doors. If the information is incorrect, the press is the first to tell you.

Florida has conducted two sexual predator sweeps with task forces comprised of probation and parole officers, local law enforcement and FDLE agents. One concern when posting sex offender information on the Internet is that offenders will avoid registering or reporting address changes. Surprisingly, of the 250 to 300 predators contacted during sweeps, only seven were not where we thought they were. We issued seven warrants. The system is relatively new, so I am keeping my fingers crossed that this pattern continues.

One other benefit of listing sex offenders on the Internet and doing these kinds of sweeps is the type of information uncovered. Authorities learned of a situation where one predator was attending Boy Scout meetings. Someone saw his name on the Internet and called police. Police also learned of a predator who was volunteering as a soccer coach. Another predator lived with his wife, who provided daycare in their home. These cases show that the system is beneficial.

New initiatives

Florida also has a service called automated warrant notification. This system notifies authorities any time a warrant is issued for a sexual predator or a sexual offender. The warrant is turned over to law enforcement agents, who conduct a fugitive apprehension of the sexual predator. We do not care whether the warrant was issued because of a violent offense, a violation of probation or a misdemeanor. We know the warrant provides the opportunity to get the offender off the street.

We are very proactive on DNA collection. We have a flag in our criminal history database that informs users whether DNA was collected for an offender's file. We are trying to collect DNA samples from anyone who is on our list of

sexual predators and offenders who, for some reason, did not have it collected when they were incarcerated.

States can access our information via the National Law Enforcement Telecommunications System (NLETS). Inquiries to our State go directly to our sex offender "hot file."⁵

There are a few other points I would like to make. The Public Safety Information Act requires a law enforcement officer investigating or arresting a person for a sex offense to check with the Department of Corrections and with probation and parole authorities to determine whether the person being arrested is on probation. If he is, the officer must notify probation and parole authorities that he or she is either investigating or planning to arrest the subject.

The other point I would like to make concerns a tragic missing-child case involving a boy named Jimmy Ryce. Jimmy's parents, Claudine and Don Ryce, fought tremendously for our State's first broad-based, community notification legislation, which was called the Jimmy Ryce Act. That is the law that was amended by the Florida Legislature in 1997.

The Ryces, who live in the Miami-Dade County area, convinced the Dade County School Board to adopt a policy that requires the school district to obtain sex offender information from the Metro-Dade Police Department and from the Internet and then mail it to the parents of schoolchildren.

⁵ Florida now contributes data to the National Sexual Offender Registry.

The Illinois registration and notification system for sex offenders

KIRK LONBOM

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Illinois has encountered many of the same problems other States faced when trying to implement their registration and notification programs — data integrity, data quality, data consistency and reaction to legislation. We fought hard in Illinois to get realistic legislation and to make sure we could deliver what the legislation required.

We have had many concerns about data problems and the reporting of convictions, especially since we deal with 102 counties statewide. We had to develop a program that would work in cities as large as Chicago and in rural counties throughout the State. We developed a comprehensive sex offender registration program. Our goal is to remember the aspirations of the Wetterling family and others.

Our registration program goes beyond data, it goes beyond forms, and it goes beyond computers. It comes down to preventing crimes, solving crimes and providing law enforcement with the tools it needs to do its job. Ultimately it comes down to compiling baseline data we can use for further studies, further research and further analysis. We are confident our program will have a significant impact on sex offenses in Illinois.

I am happy to report that Illinois House Bill 1219 is currently on our governor's desk. This bill will bring us into total compliance with the whole trilogy of Federal direction.¹ We have been waiting

for word that the governor signed this bill.²

The success of our program is the result of hard work by some extremely talented people. They worked very hard to bridge the gap between obtaining registration information from sex offenders and using it to solve and prevent crimes. We must not forget that our real goal is not only to register sex offenders but also to use their registration information to stop further offenses.

We have heard speakers at this conference use the term "zero tolerance" for sex offenders. I think we have accomplished that in Illinois. We have some great stories. We registered an 86-year-old man in a nursing home, a quadriplegic and an individual in the Federal Witness Protection program. We even registered a man currently in a coma, so I think our program has been pretty aggressive.

We have used our Law Enforcement Agencies Data System (LEADS) as the baseline for the reporting and the extraction of sex offender registration information in Illinois. The advantage of this system is that it is available to officers and investigators when they need it, even for on-site investigative queries. LEADS is available on

computer terminals throughout the State so local law enforcement can help us carry the ball by entering information such as address changes, for example. We have had experiences similar to other States with offenders making significant numbers of address changes. We really need to stay on top of that.

All sex offender information is contained in the offender's LEADS file. An officer seeking information on an individual is notified immediately that the individual is a sex offender who had been notified of his duty to register. If the individual has not registered, he is in violation of the law.

The inquiring officer has the ability to add information from a remote location to the offender's file. We frequently review sex offender records and intelligence personnel in Springfield examine the movements of these individuals to conduct proactive risk assessments in addition to crime solving. Directed messages are available through the Illinois' LEADS system similar to the way messages are sent from State to State over the National Crime Information Center (NCIC) system. We are trying to use electronic media to exchange information, and we are also using more advanced electronic systems within Illinois State Police headquarters.

Let me provide a quick overview of how information enters the LEADS system from our probation department when a court releases a sex offender on probation. Each county is required to set up a location where it can access a LEADS terminal or the

Megan's Law and the Pam Lychner Sexual Offender Tracking and Identification Act of 1996.

¹ The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program,

² H.B. 1219, 90th Session of the State of Illinois Legislature, signed by the governor July 24, 1997.

county must designate an agency to establish the contact. Information is entered into the LEADS system informing the county that the released offender is required to register and that he has been notified of his registration requirements.

State officials know that an individual has been notified of his registration requirements and where the individual is supposed to live and register so they will know if the individual fails to show up in a community and register as required. Police and sheriffs deputies can extract and provide information to the LEADS system. We use the LEADS system to formulate and print out reports that are accessible to the local officer. If a resident of a certain community wants to know who is registered as a sex offender in his or her town or county, law enforcement can extract that information from LEADS.

We use LEADS to populate other databases so we can run special reports or use LEADS information for community notification. We send quarterly mailings to schools and child-care facilities. LEADS is available 24 hours a day. We have some gratifying success stories about local officers who have made traffic stops, obtained LEADS "hits" on sex offenders and found children in their cars. In some cases, officers found paraphernalia in the car indicating that the subject was planning a sex offense. Police were able to intervene and prevent the offense from taking place.

We are trying to build a bridge between having a registration program and using the registration information proactively for intelligence and crime solving purposes. An example is using this information to create maps of areas where crimes occur. The map shown in Figure 1 was prepared following a series of sex offenses

that occurred in suburban areas of Chicago. A similar *modus operandi* was used in each attack, and they all took place in parking lots. Using this map, we were able to conduct some spatial analysis to determine which offenders lived near the crime sites so we could provide suspect information to the officers investigating the crimes. Investigating officers often lack any real suspect information.

When notification of an offender's presence is warranted, we cannot spend all day knocking on everyone's door to get the word out, so we are trying to find a way to prioritize assignments to agents and officers in the field who conduct address verification. Certain risk factors are taken into account, such as the offender's proximity to schools and other facilities where children can usually be found. We now concentrate analysis on specific tactical case issues and we are trying to get into more strategic products, such as maps detailing the location of schools, victims' and offenders' residences and all of the other factors we have to consider.

Let me talk briefly about VITAL, the Violent Crime Information Tracking and Linking system. VITAL is Illinois' first real move toward a totally electronic police-reporting environment. We use the system for intelligence reporting. VITAL gives an officer the ability to prepare an on-line intelligence report, transmit it electronically to a supervisor for approval, and then use technological tools to make the report available to other officers more quickly.

VITAL has the capability to include graphic presentations. We are making significant progress in our goal to enter all information about sex offenders into the VITAL system so it is available to our officers in the field. If an officer

has only a nickname to work with at 2 o'clock in the morning, the officer can access the VITAL system to seek a connection and, hopefully, solve a crime more quickly.

Law enforcement throughout Illinois can add information to LEADS records. This improves law enforcement's ability to track offenders' movements. If we find an individual outside of his area of parole or probation or if he is just traveling the State, it may indicate an increased threat. We also have the ability to develop a suspect list.

Some of us were talking yesterday about the relocation of offenders outside Illinois. We were thinking that States bordering each other should explore the creation of some type of system to share information. I know there are information systems being developed to facilitate that goal nationally, but focusing our efforts in specific geographic areas would also be a great help.

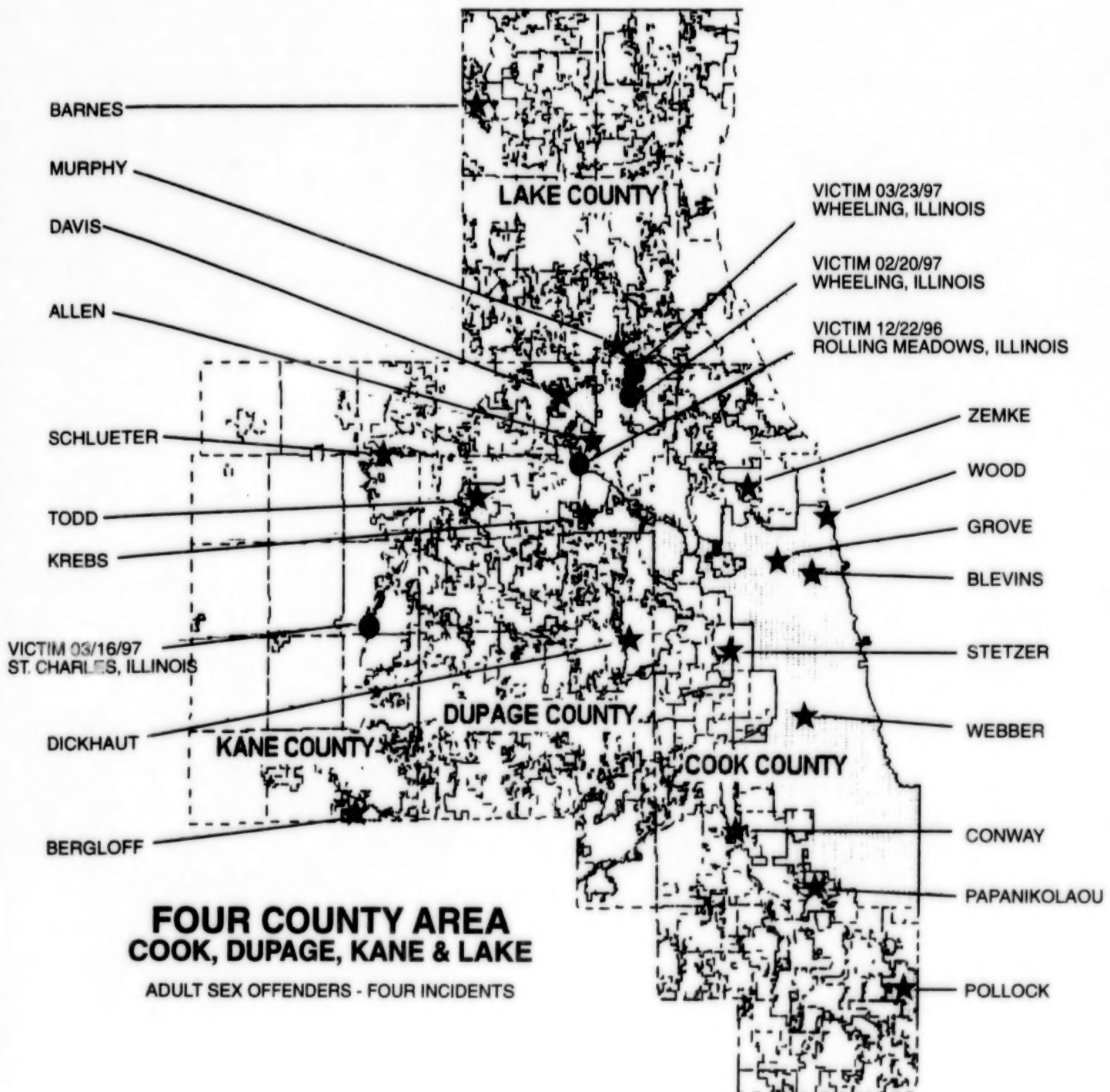


Figure 1

Development of the Illinois sex offender registration and community notification program

MIKE WELTER

*Chief, Violent Crimes Section
Illinois State Police*

The Illinois program for sex offender registration and community notification parallels the Federal guidelines except for a few exceptions.¹

In terms of our registration process, we register people convicted in other States and in Federal courts. Those of you with this responsibility know how difficult it is to identify these people and to bring them into compliance. Our registration program also includes people who are not necessarily found guilty, such as people found unfit for trial or not guilty by reason of insanity. We do not register juveniles who have been adjudicated, but we do register juveniles convicted in criminal court.

The duration of our registration parallels Federal guidelines. Sexually dangerous persons must register every 90 days for the remainder of their natural lives. Other convicted sex offenders must register annually for 10 years. That period starts either from the offender's date of conviction if he

is sentenced to probation or from the date of release if he has been confined. Our laws established retroactive registration requirements going back 10 years. Trying to identify offenders now required to register because of the retroactive provisions and trying to bring them into compliance with the law is a fairly significant task.

Offender registration

We have a process in Illinois whereby sex offenders are notified of their responsibility to register and are provided the various admonitions as required by law. The court informs the offender of this responsibility at the time of conviction if sentenced to probation. Corrections agencies inform the offender at the time of release from confinement. (It is important to note that even though the offender is not considered formally registered at this point, information on that person's status as a sex offender is available to the public. As soon as we become aware of this individual's responsibility to register, we start providing this information to the public.)

If the sex offender has been confined through our Department of Corrections, registration information is electronically transferred into our statewide Law Enforcement Agencies Data System (LEADS) on a daily basis. This eliminates manual input as much as possible, and it provides very precise information on these sex offenders and on each

offender's intended county of residence and address (which change many times along the way). Sex offender data from courts enter LEADS through normal sources.

When this information is entered into LEADS, it alerts law enforcement that a sex offender is coming to town. It also establishes a "tickler" to ensure first-time and renewal registrations. The sex offender must register in person within 10 days with the law enforcement agency having jurisdiction. If the offender fails to show up in 10 days, LEADS alerts us that the offender's status is reclassified to "non-compliance." Because of the tickler system, we can take immediate enforcement action.

As mentioned, sex offenders must register with their local law enforcement agencies. There are several reasons why Illinois legislators took that approach. They think it builds accountability with the offender and with the local agency. Legislators assumed that the agency would get more involved in sex offender registration when the offender actually reported to them. Involvement by local agencies and the community is essential to the success of the program.

¹ In Illinois, sex offender registration is required in these instances: 1) felony sex crime conviction (including attempts); 2) misdemeanor sex crime conviction if victim is under age 18; 3) convictions in other State or Federal courts; 4) offender not guilty by reason of insanity; 5) subject of a finding not resulting in an acquittal; 6) first-degree murder of a child; 7) kidnapping or unlawful restraint; 8) sexually dangerous persons; and 9) juveniles convicted in criminal court.

When the sex offender comes to register at the agency, the agency runs a criminal history check that will, hopefully, determine that the person is required to register. A registration form is completed that again admonishes the offender of his responsibility under the system. The agency must ensure that the offender reads and signs this form. The agency must enter the registration information into LEADS within 3 days. The agency also takes a photo of the offender that is scanned into our Violent Crime Information Tracking and Linking (VITAL) system. This process establishes another tickler. The system knows the offender is registered, and that he must come back and register again in 1 year (or in 90 days if he is a sexually dangerous person). If an offender fails to register, we are notified and can start taking action.

Community notification

Our community notification law differs a bit from those of other States. Ours is similar to the Kansas law: we consider all sex offenders to be high-risk so we inform the communities of all sex offenders who are required to register regardless of their registration status. We use a three-phase process, with mandatory, discretionary and public access phases.

First, each school and child-care facility in Illinois is given a list of sex offenders residing in their county; if they serve multiple counties, they receive multiple lists. This list is provided a minimum of four times a year, or more often if necessary. We had numerous instances involving schoolteachers, vendors, part-time lunchroom assistants and so forth who were identified as sex offenders. We were able to eliminate their relationship with the school or child-care facility.

The second phase of community notification is discretionary. Every law enforcement agency has the discretion to provide sex offender information to any group or person who is likely to encounter the offender, such as youth groups, victims, neighborhoods and other communities. Just recently, we shared our registry information with a variety of groups that serve Illinois, and we provided our list to the national Boy Scouts.

On the first run, they had 148 hits off our sex offender registry list. That does not mean all 148 hits were sex offenders, but the Boy Scout organization did go through the list carefully. There were a significant number of offenders coming into contact with Scouts. The first two times we gave the list to the Greater Cook County Council, a Scout leader was discovered on each list. They were removed from their posts, and an investigation is continuing as to whether any crimes were committed during their association with Scout troops.

Most of our success with the registration and notification program occurred in these two areas, because we are able to deny sex offenders access to potential victims. The police chief in one community compiled a list of the people involved in 72 youth groups. He checked first to make sure the groups' directors were not on our list. He then let the directors know the sex offender registry information was available to them, and he added the directors' names to a mailing list so they would receive regularly updated registry information on the same schedule as schools and child-care facilities.

The first time around, he found four sex offenders involved with community youth groups. We also found sex offenders who owned youth camps and every other situation you can imagine. This is where we really experienced the

benefits of our registration and notification program.

The third phase of community involvement is public access. Any person authorized to access the registry list can go to his or her local police department or sheriff's office to see the information currently on-line.

Illinois successes

We achieved some noteworthy success with the process we used to develop our sex offender registration and community notification program.

The method we used to develop and publicize our program deserves mention. We established a statewide working group comprised of judges, prosecutors, probation and corrections officials, school superintendents, Department of Children and Family Services officials, police chiefs and sheriffs. This was a fairly large group, but it was incredibly focused.

Group members provided input in the development of an operating procedure guide, which was provided to every Illinois criminal justice agency. The guide was designed to be fairly simple and straightforward. It gives the agencies a glimpse as to how the system should work.

Working group input was also beneficial in establishing administrative rules and tailoring those rules to deal with the problematic portions of the legislation. We have seen reactive legislation that gets passed sometimes. We have to comply with the bad legislation in addition to the well-founded legislation. Providing input on administrative rules is something you can do along the way to reduce the impact.

Another accomplishment worth noting is the effective partnership we developed with State lawmakers. It is critical to establish a good relationship with your legislature, and not just when you

need something or when you are asking for money. We developed an ever-increasing core of legislators willing to sponsor bills. Our most recent bill was written completely by the State Police in conjunction with the State Criminal Justice Authority. We actually had legislation completely drafted within the criminal justice community and sponsored by State legislators. It passed both of our houses unanimously and without comment.

It is also important to share information with legislators. We send a brief report to members of our General Assembly every 2 months to update them on the status of our registration and notification program, including all our successes and problems. A partnership with the State legislature is very important.

Another success has been the development of a statewide comprehensive training program. We had 3 significant changes in our legislation in the last 2 years, so we provided three training phases to all 102 Illinois counties. The training is provided to the entire criminal justice community, to schools and to the State Department of Children and Family Services. This training effort costs only a few thousand dollars a year, but the benefits are incredible. We recommend you consider including a training component in your program.

State initiatives and benefits

Collecting information on the location of sex offenders allows us to pursue State-level initiatives that provide a number of benefits. We can produce maps that illustrate the locations of recent sex offenses and registered sex offenders living near those locations, for example. We actually had a school route designated as a dangerous route because children were walking by a sex offender's residence. The school provided busing to children

who would have had to walk by the offender's house. This is another benefit of our registry program.

Using the VITAL system, we were able to develop a composite of an individual suspected of committing a number of sex crimes in the Chicago area. The system allowed us to examine certain factors, especially physical descriptors, to develop a suspect list. Developing suspect lists is very beneficial from both the State and local law enforcement perspective.

Like several other States, we collect blood from our convicted sex offenders for genetic marker indexing. We compare that data to all the crimes committed in the past where we collected DNA samples. We will use that information for comparison in all future crimes. Genetic marker indexing is a tremendous law enforcement tool. We are already getting what we call "cold hits," whereby individuals are implicated in crimes for which we had no other evidence other than their DNA to indicate their involvement.

With the current information we have, we know a large number of registered sex offenders relocate in other States and countries outside Illinois, particularly in the States of Missouri (134 offenders), Wisconsin (101 offenders) and Indiana (106 offenders). These offenders can establish artificial havens using jurisdictional boundaries; they move around not only within our State but also outside of our State. Because of this, it is important to share out-of-State information. We provide lists to other jurisdictions of the sex offenders we believe may be relocating to those jurisdictions. These offenders may not necessarily be required to register in their new States of residence, but we provide registry information on a continuing basis so if they do move to new States, law enforcement in those States can

take action to register them if necessary.

The Illinois State Police is a full-service agency. We combine troopers, investigators and crime laboratories in one agency. The State has taken a multi-faceted approach to sex offender registration which goes far beyond the registration process. We have 21 district headquarters statewide. A State Police officer is designated as a district coordinator in each of these district offices. The officer is responsible for ensuring that sex offenders register and comply with the law. The coordinating officers also act as a liaison to the local law enforcement agencies and he or she assists in the investigation of local rape cases and other sex offenses.

We established a team approach to handle sex offender registration compliance throughout the southern third of Illinois. This strategy has been very successful. When the team began, as I recall, we had approximately 600 individuals in that area who were not complying with their registration requirements. That number has been reduced to about 22 or 23 people who are out of compliance right now. I would certainly recommend you contact us if you are contemplating a program like this because we have a wealth of experience. In addition to State Police investigators, this team also includes people from the State Attorney General's Office to assist with prosecutions and so forth. We are considering expanding this concept to all of Illinois.

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The local responsibility

**The local responsibility for control and prosecution of sex offenders:
Behind Washington State's history of landmark sex offender laws**

Norm Maleng

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The local responsibility for control and prosecution of sex offenders: Behind Washington State's history of landmark sex offender laws

NORM MALENG
Prosecuting Attorney
King County, Washington

I am pleased to have the opportunity to speak on the subject of this conference, sex offender registration, and to welcome panels of experts to our community. This is a learning opportunity for us all. We can learn so much from you, and we have an opportunity to share our information as well. It is gratifying to deal with a subject like sex offender registration — a subject that so dominates the agenda for local and State governments, a subject that has spread like a prairie fire across the United States and that has grabbed the attention of Congress — because we are dealing with a hurtful subject that was ignored for too long.

The State of Washington has been a leader in criminal justice system reform for the past several decades. We enacted new sentencing guidelines in 1981, the omnibus drug act in 1988, comprehensive sex offender legislation in 1990,¹ and in recent

years, domestic violence legislation. We took a lot of these concepts and modeled them. We have the first office in the Nation to establish a special unit to prosecute crimes of physical and sexual abuse of children, for example, and we established a model domestic violence program.

Research, information, statistics

No State can put together a perfect system, but when I consider what Washington State has done over the last few decades, it is clear those efforts were based to a large degree on research, information and statistics. At the very center of this intersection between policy and research is Roxanne Lieb, Director of the Washington State Institute of Public Policy, who will be on a panel this afternoon.

Roxanne is one of the most talented individuals I know. She was at the center of every major project I was involved in over the last couple of decades. Any time the Governor asked me to undertake a new and innovative task, one of the agreements I

always struck was that I could have the services of that remarkably talented woman. When I look around the room, I imagine that if I went to your State, you would hear similar comments about yourselves or others you work with. It really is important to base these public policy issues on research, information and statistics, and not just on the latest fad or somebody's idea.

One of our local newspapers profiled my career several years ago. A reporter interviewed me for more than an hour on some of the issues I was involved with since I was elected prosecutor in 1978. Then the reporter asked me a question that was simple in one sense, but difficult in another sense. The question was this: "What would you name as the single most important accomplishment during your career?" Now, that sounds simple, but turn that question around and ask it to yourself because you may have been involved in many important things during your career.

Yet, it took me no more than a second to respond. I responded that my efforts to try and reform the criminal justice system in terms of how we deal with sex offenders and, particularly, how we deal with violent sex offenders is my single most important accomplishment. I am proud of this accomplishment, not only because it is a very important topic, but also because it is a subject that touches people's lives. Every crime touches people's lives, but there is no crime that is so associated with pain, hurt and

¹ Sex offenses, and the need for more information on sex offenders, were addressed in the Washington Legislature in 1990, in laws dealing with civil commitment of sexually violent predators, mandatory registration, release of information and victim/witness notification. One part required persons, including juveniles, convicted of a sex offense, to register with the county sheriff for the county of the person's residence (RCW 9A.44.130). Two laws are enacted authorizing public agency (including Juvenile Rehabilitation Administration) release of "necessary and relevant" information regarding sex offenders

when the information is necessary for public protection (RCW 4.24.550 and RCW 13.40.217). A law is enacted providing for law enforcement, victim and witness notification when a juvenile offender, found to have committed a violent or sex offense, is to be discharged, paroled or placed on any authorized leave or release or transfer (RCW 13.40.215). The law is amended in 1993 to include juveniles found to have committed a crime of stalking.

loss than sex crimes, particularly sex crimes against children.

Victims are common denominator in sex offender registration laws

I want to take a moment to tell you why this was such an important experience for me as a prosecutor and a person, and why each one of your jobs is so very vital to public and community safety in communities across the United States.

As you know, all 50 States today require sex offender registration. Have you ever wondered what the common denominator is for these different laws? Generally, they all have a name like Megan's Law or the Jacob Wetterling Act. If you look at each one of these laws in all 50 States, many times the name associated with the law is the name of a child.

Our experience in Washington State is no different. Our sex offender laws were passed in the wake of several outrageous sexual assaults that occurred in our State in 1988 and 1989, the types of cases that galvanized the community. Both offenders, whom I will discuss in brief, were recidivists. Everyone associated with these particular cases knew the individuals involved were time bombs. The question was not if, but when they would repeat their outrageous behavior. But the system required their release, and this is what happened.

In the first case, Gene Kane was finishing a 13-year prison sentence for attacking two women. He received no treatment while incarcerated in the State prison system. The prison psychologist said he was not a good candidate for release. Everyone knew what he would do. Nevertheless, Mr. Kane had just about completed his sentence in the fall of 1988 when he was placed in a work-release facility in downtown Seattle. He

was there for about 2 months when he hid in a parking garage. A short time later, he abducted and murdered Diane Ballasiotes. He was convicted of sexual assault and murder and sentenced to life in prison. Diane's mother, Ida Ballasiotes, who is now a State legislator who devotes her life to strengthening our criminal justice system, demanded answers from State officials. They had no answers as to why this type of person was free in our community.

In the second case, Earl Schriner had a 24-year history of assaults on children dating back to the period when he murdered a 15-year-old classmate when he was 16 years old. After his incarceration and subsequent release, he committed more crimes and was sent to State prison for 10 years. While in prison, he told prison officials exactly what he would do when he got out. Mr. Schriner was considered too dangerous to be placed in a work-release facility for the last couple of months of his prison term. He was released, of course, and in early 1989, he sexually mutilated a young boy in Tacoma. He will also spend the rest of his life in State prison.

The response to these tragedies from criminal justice professionals was predictable. They said, "There's nothing we could do because their sentences were completed." This response is not acceptable to average citizens. They demanded that the State respond. Then-Governor Booth Gardner appointed the Governor's Task Force on Community Protection in response to the public outcry over these tragedies. The Task Force was comprised of a whole series of people with experience in the criminal justice system. Regular citizens, including Ida Ballasiotes, were also members.

The task force held hearings in six communities around the State of Washington. Hundreds of people

came forward to offer their stories — stories of hurt, loss and suffering. They did not particularly have suggestions as to what should be done about the sex offender problem, but it was almost therapeutic for these people to come forward and tell their stories before a panel of people who cared about their pain.

Washington State enacts landmark sex offender laws

What came out of these hearings was simply this: We have underestimated the hurt associated with this type of crime for too long, and we have undervalued the seriousness of the crime as well. The task force forwarded draft recommendations to the governor and the legislature. The legislative package was passed without a single dissenting vote. It was a five-part program that we believed would be comprehensive, balanced and effective. It had these components:

1. We addressed tougher criminal sentences by literally doubling the length of our prison sentences.
2. We provided treatment programs, not only within the State prison system but outside as well, including what is probably the first treatment program for juvenile sex offenders.
3. We originated the first civil commitment law in the Nation; one that was later adopted by Kansas and recently upheld by the U.S. Supreme Court.
4. We provided for a community notification program that allows law enforcement to decide how the community should be notified in particular cases.
5. We provided a sex offender registration program, which I believed would be a good investigative tool for law enforcement.

With other legislation we have in Washington, such as "three strikes and you're out" — and, quite frankly, with sex offenders today, it is "two strikes and you're out" — we most likely have the Nation's toughest sex offender laws. The linchpin to the prevention of these types of crimes is sex offender registration.

The importance of registration

Sex offender registration is an important tool in its own right, but it is also a dramatic example of that old cliché, "The whole is greater than the sum of its parts." Sex offender registration programs are even more effective when they are combined with longer prison sentences, community notification and treatment programs. Registration becomes a vital component of a comprehensive program.

Why do we require sex offenders to register, and not robbers or burglars? You do not have to be a rocket scientist to figure that out. Sex offenders are different. They are different in so many different ways, and our laws have treated them in a different fashion. That is why law enforcement must know who the offenders are, where they are and what they have done in the past.

We know sex offender registration laws can help solve crimes. A good example of this is a recent case in our community. A 14-year-old girl was walking through a park in Lake Forest Park — a very small community just north of Seattle — in the middle of the afternoon in November 1996 when she was grabbed by a man and dragged into the bushes. She fought very, very hard, and she fought very, very bravely. Her assailant decided to discontinue the assault. He released the young woman and fled the scene.

The young victim had a good look at her assailant, and another citizen in the park saw the man depart in a tan Volkswagen automobile. There were no other leads.

What was the first course of action the Lake Forest Police Department took in its investigation into the assault? Investigators examined the list of registered sex offenders who lived in the area. They were able to reduce the number of potential suspects because the girl provided a general description of her attacker. During a subsequent records check, they discovered that a convicted rapist named Evan Best lived just two blocks from the park. His mother owned a tan Volkswagen registered to her.

The victim identified Best from a photo montage and, later, from a line-up. The case is presently before our office for prosecution. This is a prime example of a sex offender registry being used as an effective investigative tool. Best is also the first "two-strike" candidate in King County. If he is convicted of this assault, he will spend the rest of his life in prison without the possibility of parole. This is a good example of how this registration statute gave a kick-start to an investigation.

Setting public safety priorities

While the public and the State legislatures treat sex offenders as a high priority, the criminal justice system frequently sets different priorities. I want to ask you this question: What priority does the justice system give to sex offender registration statutes? I would say, "Not much," because of the way institutions set priorities.

Let me talk for a moment about how institutions, such as police departments, go about setting priorities. You begin with the street cop and the detective. Police officers would say their most important responsibilities or

priorities are serious crimes like murder. If you asked detectives in a sex crime unit, they would probably say the most serious crimes are murder accompanied by sexual assault or aggravated rape. They would never respond, "Our number one priority is to go around and find people who are violating our sex offender registration laws."

For that detective, his or her response is appropriate and correct for a person focused on crime. But what should we expect from the institution, the police department, the chiefs of police or the prosecutors in our community? We should expect a different response. That does not mean murder and violent aggravated rape will not continue to be priorities. They will, but we also have to elevate the priority of sex offender registration, because we are not only interested in the nature of the crime, but the nature of the criminal.

Someone once asked me, "Norm, what is your most important responsibility as a prosecutor?" I always respond, "My responsibility is to kick the system in the butt to make it realize what the important priorities really are." Sex offender registration is equally as important as those serious crimes because we are trying to prevent those outrageous and heinous crimes from occurring in the first place.

An estimated 3,200 sex offenders live in King County, and each is obligated to register. About 600 more come out of the State prison system each year, so we are dealing with significant numbers of offenders. Despite this, until recently, a grand total of two detectives in King County were assigned to investigate failure-to-register cases. Two detectives! King County contains one-third of our State's population; slightly more than 1.5 million people. More than 3,200 offenders are required to register, 600 more offenders are

exiting prison each year, and we have two detectives assigned to that task.

There are a number of reasons for this low priority. One reason is the problem institutions have in setting priorities correctly. Another reason is that, until recently, violation of our sex offender registration statute was a misdemeanor in most cases. If you work in a police agency, are you going to start investigating the misdemeanors or the felonies? Thankfully, the laws were changed in the last session of the legislature to make nonregistration a felony offense. Felony means priority within the criminal justice system.

Tackling backlog of cases

I am very proud of our ongoing efforts to establish an interjurisdictional task force. This task force has the personal support of the Seattle Chief of Police, myself as prosecutor, the King County Sheriff, and other law enforcement leaders. It will be comprised of police, prosecutors and Department of Corrections personnel, who will tackle the backlog of cases that were not adequately investigated. We are going to give these cases priority treatment. We expect this to be an ongoing effort to give priority treatment not only to the crime, but also to the criminals.

There are challenges ahead. One, of course, is to make sure sex offender information is available in the statewide computer database so police officers will have access to an individual's sex offender status during a traffic stop. Another challenge is to develop communication between local police agencies. King County has 35 cities and 24 police agencies. The sheriff's office performs contract work for some of the smaller police agencies. That requires a lot of coordination to eliminate duplication and to assure

that we can work across jurisdictional lines. I am very proud of the efforts we made in the State of Washington to address the whole issue of sex offenses.

I am grateful for this opportunity to speak to you today. Maybe now you can appreciate the answer I gave to the questions posed by the newspaper reporter who wanted to know the most important accomplishment in my career. I honestly answered that it was the work I did reforming our laws controlling sex offenders, particularly violent sex offenders. This topic involves a lot of hurt and pain and loss on the part of victims that can never be adequately measured. We in the criminal justice system can never say we feel your loss, but we can have some appreciation and understanding for it and to try to do something about it.

Panel of the States: Enacting legislation

Creating effective sex offender legislation requires
collaboration between lawmakers and justice agencies

Rep. Mike Lawlor

The big picture of sex offenders and public policy

Sen. Florence Shapiro

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Creating effective sex offender legislation requires collaboration between lawmakers and justice agencies

MIKE LAWLOR

Representative

Connecticut General Assembly

I have been asked to shed some light on the process of making sure enacted legislation does what it is supposed to do. Also, I would like to share some insights I learned about the legislative process, both in the Connecticut Legislature and in talking to my colleagues from around the country.

I missed the first part of this conference, but I understand you gave some of the Federal Government representatives a hard time when they were complaining about spending money to implement these registration and notification programs. It is about time the tables were turned. Each of us in our own States understands how our own system works. The Federal Government often steps in and tells us how to retool our specific justice systems to meet its goals. While the government's intentions are good, it is sometimes disruptive because the rules the government wants to implement have more to do with the needs of the home States of the various congressional committee chairs than they do with our States.

I think this has been a source of great frustration for many State legislators around the country. I want you to know we share your frustration that, perhaps, things are becoming overly complicated. My message to the Federal Government is this: "Just send us the money!" We will figure out how to spend it on these registration and notification programs. Every State is different, but we have the same goal.

One size does not fit all

I have been surprised at the variety of the criminal justice systems around the country. In Connecticut, for example, we do not have any county jails. Our prosecutors are not elected. Our attorney general has no criminal jurisdiction. These three factors seem to be unique to our State. "One-size-fits-all" Federal requirements really do not apply to Connecticut.

I think when we talk about registration and notification requirements, we must understand that every State is very different. We should determine our general goals and try to retool our specific State systems to meet these general goals rather than try to implement a "one-size-fits-all" Federal system that helps States in theory but not in application.

We need to understand that, even though every State legislature has taken a stab at sex offender registration, notification, Megan's Law and civil commitment, there is no one model we should emulate. Each State is testing its specific practical problems related to these issues. At forums like this, we can share our experiences and learn from one another's failures and successes. I think that is very important, and that is why I am pleased the Federal Government has decided to invest in conferences like this, hiring experienced organizations like SEARCH and others to bring us together so we can talk these issues through.

Debate centers on how to reach common goal

Whether you are talking to liberal or conservative legislators, Democrats or Republicans, or elected officials from urban or rural areas, I think it is fair to say that everyone agrees that controls on sex offenders must be made more stringent. I am also sure that everyone in this room agrees that violent, predatory, pedophilic sex offenders ought to be incapacitated for as long as possible. That is a central goal that no one disagrees with.

There is a lot of disagreement, however, about the types of laws necessary to accomplish that goal. That is important to keep in mind, because many of the debates taking place around the States are between this faction and that faction. People get the impression that some think it is okay for sex offenders to be wandering around our communities with minimal restrictions. That is really not the case. Most of the debate centers on how to write the rules, not the central goal. It is very important to keep that in mind.

From a political perspective, there are two ways to look at this problem. (Most people do not look at problems from a political perspective, but then they do not have to run for office every 2 years.) The first issue we have to look at is policy. What is good policy? The other issue is politics. What are good politics? Both issues are very important to almost every legislator.

The sex offender issue, as much as any other issue in the political universe, is good politics. Each and every one of us likes to talk about this issue on the campaign trail because people pay attention. It grabs the public's attention and that means votes. So it is very important for us to be able to talk about sex offender issues, but it has to be just as important to write policies that respond to the problem. If it works on the campaign trail, then we have to make sure it works in the police stations, in the courthouses, in the probation offices, in the prisons and in the community. That is my goal as a policy maker.

In order to accomplish this, we need to understand that the real problem is public frustration. Citizens are frustrated by the perception that the criminal justice system cannot deliver public safety. That is what people are upset about, and they focus on this issue because they read in the newspapers that multiple-conviction sex offenders are living in their communities. These offenders are not on parole or probation any more. They are roaming around and preying on new victims and that gets into the newspapers. "How come the criminal justice system let these people slip through the cracks?" the public asks. That is what people are upset about.

Connecticut's experience drafting sex offender laws

We started to address some of these problems in Connecticut 4 or 5 years ago and, naturally, we made some mistakes. I am sure that similar mistakes were made in other States. We also had some great achievements, but we should keep the public's frustration in mind. The public does not seem upset about the handling of every sex offender, such as people convicted of statutory rape. Rather,

the public is upset about predatory pedophiles.

The rules we write in the State legislatures can do a lot of good, but they can also do a lot of damage. The most damaging problem is directing financial resources to areas that, ultimately, do not contribute to public safety. My greatest fear is that many States may end up creating systems that generate a lot of paperwork and a lot of forms for police and probation officers to fill out, but that do not contribute to public safety.

Here is an example of a problem we had in Connecticut. We originally passed a sex offender registration law that required persons convicted of felony sex offenses to register. That made perfect sense to the politicians. We were debating on the floor of the chambers about what offenses should carry a registration requirement. Persons convicted of a sex offense seemed a logical choice. After all, people who prey on children should have to register. We ought to know where they are.

Unfortunately, my colleagues and I never talked to prosecutors, public defenders and other professionals who knew how the system works. If we had, we would have found out that most pedophiles convicted in our criminal justice system are not convicted of sexual assault. The offense is called "risk of injury to a minor" in our State. You may have similar terminology in your States.

It took 3 years before that offense was added to the list of those requiring registration. Please keep in mind that registering pedophiles was always our goal, and they were not even on the list of those required to register. Here we were generating all these forms that probably did not relate to the predators who were the risk to children.

We were also very nervous over the last few years in Connecticut about enacting legislation that would later be found unconstitutional. A good example is the civil commitment statute. I am sure that every State legislature will soon pass civil commitment statutes now that the U.S. Supreme Court has established the guidelines. Unfortunately, a lot of elected officials went full steam into sex offender statutes that did not stand up to appellate review. In so doing, they created a lot of extra work for police and probation departments that was ultimately torpedoed because the Supreme Court overturned certain legislation. That is a problem we do not have any more.

Connecticut lawmakers learn from justice agencies

This is my plea to all of you here today. As politicians, we are interested in responding to problems — fear about public safety, for instance — but we rely upon justice agencies to educate us about the day-to-day realities of the problems the agencies want to address. We need your input on problems we can address by statute or by providing you with the resources you need to make our legislation work.

Let me give you an example. We reached out to our justice agencies a few years ago to find out what help they needed. These were some of the responses.

— Juvenile offenders

First, we learned that, in many cases, Connecticut juveniles getting their first sex-offense arrest at age 13, 14, or 15 often received no punishment until their fourth or fifth arrest. In Connecticut's justice system, individuals under age 16 are considered juveniles and not much happens when they get arrested for crimes. They may be sentenced to some sort of minimal supervision but not much else. Then the offenders hit age 16 and commit other sex offenses. They are arrested and prosecuted as adults, but they can avoid serious punishment by applying for Youthful-Offender status.

After still more arrests for sex offenses, they can apply for Accelerated-Rehabilitation status. Young sex offenders with multiple convictions took advantage of all these entitlements. It was not until their fourth or fifth arrest that they actually got convicted.

The prosecutors suggested that young sex offenders should not be allowed to take advantage of Youthful-Offender or Accelerated-Rehabilitation entitlements because, as we all know, people do not grow out of this type of conduct. If we target them right off the bat, we could provide treatment or incapacitate these types of offenders before they victimize other people. In the end, they will be registered with all the restrictions that go along with registration requirements.

As politicians, we would not have thought of that ourselves. Those suggestions came from juvenile and adult prosecutors who asked to change the law in a way that helped them considerably.

— Terminology

Another example is the actual definition of the term "sex offender." When we defined that term and included it on the list of offenses that carried a registration requirement, defense attorneys responded accordingly. Once they knew the offenses on the list, they began advising their clients to plead guilty to crimes that were not on the list. In the most serious cases that hinged on the testimony of a child-age victim, prosecutors felt it was safer to allow a plea bargain to a lesser offense and a guaranteed prison sentence rather than risk the child not testifying.

We were asked to remedy that situation by creating a list with the most frequent sex offenses, but giving justice agencies the discretion to seek registration and notification requirements for crimes that were not on the list but that may involve sex offenses against children, such as kidnapping or reckless endangerment. We gave the agencies that discretion. If they determine an individual is a sex offender even though he has not been convicted of specific crimes on the sex offense list, we still allow them to require that person to register upon release from incarceration or supervision.

— Lifetime probation

Another strong suggestion we received was for lifetime probation for sex offenders. What good is it if someone is in jail for 10 years and then on parole or probation for a couple more years, after which they walk away without any supervision whatsoever? We lack the leverage to control them after that. They may have to register, but where do we get the justification to keep tabs on them on a daily basis?

The Connecticut Legislature adopted lifetime probation for sex offenders, although the prosecutors do not apply it that often. They were concerned that probation officers already had too many cases to monitor. The average caseload for probation officers in Connecticut is more than 200. Therefore, we decided to create a special unit in the probation and parole office to monitor only high-risk sex offenders. We established and funded that office and it will soon be up and running throughout the State.

We have a very small State with only 6 counties and 3.3 million people. Two of our counties now have these specialized sex offender probation and parole units. They have been very successful and, as I said, the program will soon be implemented statewide. We want the people monitoring the sex offenders to be specially trained so they know what to look for.

In my opinion, the registration and community notification process is the last resort. The first resort is incapacitation. Registration and notification are fallbacks. If all else fails and there is no other option, then by all means, we should know where these sex offenders live.

I would rather increase the penalties for predatory-type sex offenses so we can put people in jail forever. If the offender is released from jail, then let us make sure he is under tight supervision. That is why we implemented a minimum 10-year probation period following any sentence of imprisonment in Connecticut. If someone goes to jail for 10 years, then he or she will be on probation for 10 years when incarceration ends.

— Intervention

We gave parole and probation officers special authority to intervene if they determine that a convicted sex offender is improperly interacting with children. One convicted offender in Connecticut was dressing up like Santa Claus. Parole and probation officers can put someone like that right back in jail. We developed an expedited process to accomplish that. It makes sense. People do not grow out of this type of behavior. The suggestion to implement that program came from our parole and probation people. We would have never thought of it on our own.

— Alford Doctrine

A recent problem becoming more and more common in Connecticut is that people are pleading guilty to sex offenses under the Alford Doctrine,¹ which allows a defendant to plead guilty to a crime while not admitting that he or she committed it. "I do not admit that I committed this crime," a sex offender will say. "I agree to plead guilty because I think you could convict me. I am not going to admit to the crime at sentencing. I am just going to take my 10 years."

The offender is sentenced to prison for 10 years along with a registration requirement upon release. The offender does not register and his probation officer tries to put him back in jail. In court, the offender says, "How can I violate my probation? I said at sentencing that I did not admit committing the crime." We asked prosecutors not to allow guilty pleas under the Alford Doctrine if

they are going to seek treatment or registration as conditions of probation, because it defeats the whole purpose.

Registration as a 'last resort'

Finally, I want to address the issue of registration and notification as last a resort. Three convicted sex offenders in New Jersey get out of jail at virtually the same time. All three have served their maximum sentences and there are no probation requirements or supervision. They have finished their sentences. They rent an apartment together. A few weeks later, Megan Kanka, who lived right across the street, is raped and murdered by one of them. As we all know, this resulted in Megan's Law.

This type of crime could be prevented in Connecticut because we require some form of supervision for all sex offenders when they finish a prison sentence. In the future, persons sentenced under our new laws will have lengthy supervision. Our argument is that sex offenders should not be living near potential victims. If someone finishes a jail sentence, and his probation and parole supervisors feel he constitutes a risk to a potential victim, then he should not be allowed to live in proximity to that potential victim. Forget about notifying the neighbors. He should not be living near the potential victim in the first place. That suggestion came directly from our parole people. We make it clear in our statute that parole officials can determine where a sex offender can and cannot live.

I read the results of a Massachusetts public opinion poll the other day that surveyed the public's attitudes about the criminal justice system. Polltakers asked respondents to rate the credibility of the different parts of the criminal justice system: the courts, the

police, probation and parole, and corrections. Which agency do you think received the lowest rating? Respondents ranked the courts lowest in credibility. The police received the highest rating. Courts, probation and parole and corrections were all rated very close to each other but courts received the lowest rating.

One problem we all have is that we tend to blame other parts of the criminal justice system when something goes wrong. The police blame the courts. The courts blame the prisons. The prisons blame parole. Everybody blames the politicians, the laws and the liberals. Politicians blame the media and the courts. It is a big, vicious circle and a self-defeating process.

Those of us who care about the integrity of the criminal justice system have to learn to work together. It has been our experience in Connecticut when reforming our juvenile justice system, our sex offender laws or our truth-in-sentencing system that we learn a lot when we talk to the professionals. After we talk to the professionals, the laws we pass tend to work. Our reward is holding a press conference and a ceremony with the governor signing an effective crime bill. That is how we look good. We put that in our political mailers and we are done with it. That is rewarding to me. I am not a unique politician in that respect.

When you get back to your States, I advise you to call your elected officials who are interested in criminal justice and invite them to where you work. Ask them to come and listen to your day-to-day frustrations about too much paperwork or lack of effective resources. I think you will find that politicians love to come and listen to you because it makes them sound like they know what they are talking about. You may also find

¹ In *North Carolina v. Alford* 91 Sup. Ct. 160 (1970), the U.S. Supreme Court held that an individual accused of a crime may voluntarily and knowingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.

that your suggestions make it into the final legislative packages. I get credit card solicitations like everyone else. These solicitations have fine print and footnotes, but like everyone else, the first thing I look at is the interest rate. That is all we care about. We sometimes do not want to read the fine print. That is kind of how it is with legislation. We may want to vote for a piece of legislation like Megan's Law without taking time to write the fine print that will make the law more effective for our justice agencies.

We have the opportunity to write the fine print in many of these bills, and you will find legislators and their staffs want to know what justice agencies think. What do you think will work? By working together, we can create legislation that meets the broad demands of the public and that also contains the fine print that will allow justice agencies to use the legislation effectively.

The big picture of sex offenders and public policy

FLORENCE SHAPIRO

Senator

Texas State Senate

It is a beautiful day here in the State of Washington. In fact, today's weather reminds me of a similar day in Plano, Texas, which is a suburb of Dallas. It was Labor Day 1993. Diana and Dick Estelle were watching their son play in a soccer tournament. Like many 7-year-olds, their young daughter, Ashley, quickly became bored, so she asked her parents if she could play at a playground just a few hundred yards away. Lots of other children were playing there. The Estelles decided to let her go to the playground. The decision will haunt them for the rest of their lives.

In a single, treacherous, life-torturing moment, Dick felt an instant rush of horror when he turned his head and saw that Ashley was gone. It is a horror that startles the strongest parents from their sleep. In the next several hours, Ashley was abused and strangled. Her happiness, her innocence and her life were taken from her. The abduction, rape and murder of 7-year-old Ashley Estelle became my passion for the next 4 years in the Texas Senate.

It was the end of my innocence as a lawmaker, and it was my introduction to the very complex and very difficult world of sex offenders and criminal justice. As vice chair of the Texas Senate's Criminal Justice Committee, I quickly learned that there were many intertwining facets involved in sex offense issues. I have also come to know that there are a number of qualified people knowledgeable in a variety of aspects of this issue in areas such

as adjudication, punishment, treatment, assessment, tracking, registration, public notification and commitment.

While still in their infancy stages, each and every one of these aspects is becoming a well-developed area of expertise across this country. The amount of information and research continues to accumulate every day. However, I am not here to talk to you as an expert in any one of these fields. Any input of mine in specific fields would be rudimentary to our purposes here.

Instead, I would like to take a few minutes to share something that has become very familiar. It is something that changes continuously, something for which there is no ending or absolute perfection. It is something so obvious that we often neglect to view it properly. It is the big picture of sex offenders and public policy.

For the next few minutes, I would like to step out of the micro and discuss the issue of sex offenders and the criminal justice system from a macro perspective, not only because of its importance, but also because of the tremendous impact that sex offender laws have had on our criminal justice systems and on each of our States in a few short years. My premise is that the criminal justice system must be transformed or at least modified to effectively handle the adjudication, the punishment, the tracking, the monitoring and the treatment of today's sex offender.

I will argue that putting the modern sex offender into the

traditional criminal justice system is usually as successful as keeping a snake in a shoebox. The confines of the apparatus are simply inadequate to restrain its contents. It is often difficult to come to any solid conclusions about what course of action to take. For example, the debate over the origin and the cause of pedophilia is difficult. Some research indicates it is a mental deficiency or abnormality. Other research indicates that sexual deviance is a progression of acts. In some aspects, this issue is almost as difficult as the age-old abortion debate over when life begins.

It is difficult to draw conclusions, but conclusions are necessary if we are to draft effective legislation. As policy makers, we rarely have the luxury of having it both ways. This is especially true when one considers public safety. For example, am I supposed to believe that deviant sexual behavior is caused by mental abnormality or illness? If it is, then punishment by incarceration would provide very little deterrence. Am I supposed to believe the argument that sex offenses are a willful progression of acts for which imprisonment is totally appropriate?

Although information and knowledge are accumulating, there are very difficult and different issues for which there is precious little guidance, but there is one thing we know to be absolutely true: Sex offenders are a very unique type of criminal. I like to say they have three very unique characteristics:

- They are the least likely to be cured;
- They are the most likely to reoffend; and
- They prey on the most innocent members of our society.

Three broad assumptions

I think we need to take a step back so we can see the entire picture; the forest in addition to the trees. I want to begin with three broad assumptions.

The first is that traditional criminal justice systems are ill equipped to handle sex offenders. The second is that the public's primal fear of these offenders and their crimes is unparalleled. It requires our highest sensitivity and utmost diligence. The third is that effective policy for the States must include a comprehensive legislative and administrative approach to sex offenders.

As you would expect, my community of Plano was completely shell-shocked following Ashley's abduction. Residents were saddened, and they were frustrated, not only by Ashley's death, but also by the manner in which Ashley died. When the history of Ashley Estelle's murderer became known, the community's frustration turned into deep-seated anger.

Michael Blair, Ashley's murderer, was a convicted sex offender who was previously released from prison after serving only 17 months of a 10-year prison sentence. It turned out this occurrence is more the rule than the exception. As a State senator, I began to inquire about the criminal justice system to find out how such a predator could have been paroled so early to prey on yet another child, this time Ashley Estelle. I called for an investigation. When I finally received the report, it was literally unbelievable.

The Internal Affairs Division listed 34 specific errors in the

handling of Michael Blair from the time he was arrested, through his incarceration and on to the time of his parole and release. Needless to say, we drafted a series of bills, which later became known as Ashley's Laws, that addressed some of the problems we uncovered. Suffice to say that, without exception, the entire criminal justice system had failed my community and it was destined to repeat its failure.

I will discuss the Michael Blair case in more detail, not because of Michael Blair or the State of Texas, but because I truly believe it illustrates what actually occurs across the entire country on a daily basis.

During our investigation into the case, one reporter asked me, "Senator, don't you think Michael Blair is just a quirk in the system?" My response was, "No. I think this is the system."

— Assumption one: Justice systems are ill-equipped

This leads to my first major point. The traditional criminal justice system is ill equipped to handle sex offenders. Any examination of the criminal justice system should include a definition of its terms. Let me tell you how I define the word "system." I use it to refer to three separately organized and autonomous parts: law enforcement, the courts and corrections.

In Texas, the Blair situation was a textbook case study of how *not* to handle sex offenders. Things went wrong almost from the time of his first arrest. He was arrested for the crime of burglary of a habitation. The actual intent of his crime was to snatch a child, not to steal a television set. This information was lost when Blair plea-bargained to a lesser charge. He was convicted and sent to prison as a common, everyday burglar.

He was given early parole due to a Federal court order covering overcrowding in the Texas prison system. There was no indication in any of his files that he was a violent person or a predator. That led to the next problem.

Even while on parole, his supervisor had no indication of Michael Blair's motivation. Because he had only been convicted of burglary, Blair was given low-level priority in his probation officer's caseload. Because the probation officer had such a heavy caseload, Blair was free to prey on children in public parks. That is when he happened upon Ashley.

The Texas experience is important for two reasons. One, we now know that the Blair case did not result from bad personnel in our criminal justice system. It was the result of bad policies. Two, the Texas experience is not unique. These types of situations happen nationwide. Criminal justice systems are, dare I say, bureaucracies. As such, there are inherent barriers that make it extremely difficult for personnel to carry out their duties.

This lack of accountability, which occurs when intersystem relationships are hampered, results in the subsequent release of other "Michael Blairs" who are incarcerated in our prison systems.

This is the first lesson of the Texas experience. When one agency's statutory duty to monitor a sex offender has concluded, it is the moral duty of that agency to adequately pass the baton to the next agency that is required to monitor the offender. Clear communication and effective interagency policies are critical. Oftentimes, the problem is not miscommunication, but rather a byproduct of the mammoth size of the bureaucratic entities involved. Even worse are the legislative and administrative rules and policies

that bind the hands of criminal justice officials and prevent them from doing their jobs.

Granted, Texas is a very large State. We have 254 counties and almost 20 million people. There are 150,000 people incarcerated in our correctional facilities today. I was shocked to find that most States, including Texas, required the express consent of the offender before agencies could share information. It is inexcusable to me that an offender must give permission before a probation officer can share vital information with a police officer. This leads to lesson number two of the Texas experience.

Legislatures and justice agencies must remove barriers that prevent the free flow of information between agencies so criminal justice professionals are not reluctant to do their jobs out of fear of liability. Information is critical to our systems. Secrecy is the sex offender's best friend, so we must shine a light on everything they do. Here is lesson number three of the Texas experience.

Individual agencies are unable to impose systemwide changes, even when they are aware of specific policy problems. The legislature working hand-in-hand with justice professionals can make systemwide changes. This lesson was clearly written as long ago as 1967, when the President's Commission on Law Enforcement, commenting on the separate parts of the criminal justice system, stated, "These parts are by no means independent of each other. What each one does and how it does it has a direct effect on the work of the others."

Reforming or reorganizing any part of a justice system or a procedure affects the other components of the justice system. Therefore, a study of a justice system must begin by examining the system as a whole. We must

step back and examine the entire system and root out anything that prevents us from efficiently carrying out sound public policies.

— Assumption two: Sound public policy is critical

That leads me to the next question. Why is it so critical that we have sound public policy in this area? The answer brings me to the second broad assumption: the public's unparalleled primal fear of sex offenders and their crimes. It requires our highest sensitivity and utmost diligence. I do not believe you can effectively discuss the sex offender issue without also discussing the public and its safety. This is the primary factor responsible for much of the legislation that results in public policy, both good and sometimes bad, regarding sex offenders.

For legislators, it is the call that must be answered, and answered swiftly. James Baldwin once said, "If one really wishes to know how justice is administered in this country, one does not question the policemen. One does not question the lawyers or the judges. One goes to the unprotected; those precisely who need the protection the most, and listen to their testimony." Ladies and gentlemen, if you hear the testimony of those who need protection most, it will motivate you.

Nowhere does the duty of our system manifest itself so greatly as it does here. There is something absolutely terrifying and threatening to our basic freedom when you talk about a sex offender whose victims are children. The nature and deviousness of these offenders and the innocent and vulnerable character of their victims combine to form a highly toxic and flammable mixture when it comes to public confidence in the system. The public does not really care what we do with sex offenders. All it cares about is that

these offenders are kept off our streets. The fear is understandable. After all, what could be more devastating and what could be more evil than stealing the innocence from one more child?

I mention this area because I think it is very important for all of us to understand how the public's justifiable fear results in legislation. It is not the place for legislators to waffle on public safety matters simply because they are controversial. In fact, I believe public safety is one of the most important government functions. If we do not do it well, we might as well just turn off the lights and go home.

However, we have a duty to do what is right. We have a duty to do what is just, and we have a duty to do what is constitutional. This is sometimes easier said than done, especially when civil libertarians are saying one thing and victims' rights groups are saying something else. Each of these groups has the luxury of ignoring the other. Legislators must hear both sides and try their best to legislate public policy with both opinions in mind.

All legislators must also realize that these issues are ripe for the emotional fervor that leads to ill-advised and even unconstitutional public policy. That is why the expertise and ideas of justice professionals are so essential to this process. You must become our partners in the public policy arena. You must know that your participation is vital to us. The heightened response to sex offenders is too new and your input is too important to do otherwise. You must be the ones to take your knowledge and your information to legislators, and help them forge sound public policy. Make no mistake about it, when tragedies like Ashley's occur, legislation will be introduced. The strength and efficiency of that legislation is dependent on the input received

from our nation's justice professionals. Trust me. We need you. That leads me to the third broad assumption.

Assumption three: A comprehensive approach is most effective

Effective State policy must necessarily result in a comprehensive legislative and administrative approach to sex offenders. I have become convinced that meaningful reform in the area of sex offenders must contain three elements. Number one, it must be constitutional. Number two, it must be comprehensive. Number three, it must be done from a foundation of expertise, not simply from a knee-jerk reaction.

I am a conservative senator. I often agree with President Woodrow Wilson, who said, "The responsibility of government is to render justice, not pity." Let me briefly outline what we did in Texas through Ashley's Laws.

Ashley's Laws

Immediately after Ashley's abduction, it became clear that something needed to be done legislatively to bring Texas into the 20th century in relation to sex offenders. We went to work. With a watchful eye on the problems other States were having in this area, I created a task force of experts from throughout my county who could help draft legislation.

We had people from every possible area. We had prosecutors and law enforcement. We had the American Civil Liberties Union. We had parole and probation officers, treatment providers and victims' advocates. Fortunately, the Texas Legislature was not scheduled to convene for another 18 months. It became obvious during the course of our discussions that a complete overhaul of our sex offender

program was necessary. A change in one or two areas did not remedy other down-the-line problems we never anticipated.

When it finished, the task force had drafted 66 separate pieces of legislation. I had to tell the task force members how difficult it was to get even one piece of legislation passed. The list was then pared down to 13 pieces of recommended legislation. I would like to break those down for you very briefly into four specific areas: changes in punishment standards; changes in community supervision and parole policies; changes in interagency procedures; and the creation of community safeguards.

— Punishment standards

In the area of punishment, we passed a two-strike habitual sex offender statute that requires an offender to receive an automatic 35-year sentence without the possibility of parole for a second felony sex offense against a child. Rape is also included in the statute. After the offender serves his 35-year sentence, the parole board must receive a favorable psychiatric report and 12 of 18 parole board members must vote in the offender's favor before parole is granted.

We prohibit offenders from receiving repeated community supervision sentences. They are allowed to be on probation only once. If avoiding prison is their main objective and probation is their punishment of choice, we give them only one chance.

— Community supervision

We made several changes in the area of community supervision, probation or parole. We created "child safety zones" around areas where children typically gather. Offenders are prohibited from being in these areas. This measure also prohibits sex offenders from participating in any activity or

profession involving children, such as coaching, working at a daycare center or serving as a church counselor.

The law now requires longer periods of community supervision for offenders. The minimum period is 5 years, and an offender must serve at least two-thirds of it before it can be terminated.

We also notify the victim if the victim's assailant is released into the community on probation, or what we call "deferred adjudication." Before the judge can grant deferred adjudication or probation, the judge must find in open court that the offender's release is in the victim's best interest, not in the criminal's best interest. We also require that an offender must be enrolled and attending treatment as a condition of release.

— Interagency procedures

In terms of the changes we implemented in interagency procedures, we were only limited by our imagination. We removed barriers so volunteer centers can access quality information when providing background checks for nonprofit organizations. Pedophiles are often found in nonprofit organizations. Background checks are essential for those individuals.

We require continuing legal education for lawyers and judges. This is a new field, and they should understand its unique characteristics. We provide liability immunity when agencies share information with each other or with treatment providers. We overhauled the registration system database by requiring that the offender no longer register himself. The releasing entity, the court and the correction facility must fill out a registration form for the offender and forward it to the Department of Public Safety, where the database is housed. A copy of the registration form must then be sent to the police

chief or the sheriff in the community where the offender intends to reside.

This must all be done before the offender is released. Upon release, the offender must personally appear at the local law enforcement agency within 7 days. We also require the offender to notify local law enforcement if he intends to move at least 7 days prior to the move. He must also notify law enforcement of the location of his new residence.

Local law enforcement may verify registration as often as it deems appropriate, and certain offenders may be required to verify their addresses every 90 days. We require sexually violent predators to register for life. Because a complete and comprehensive database is our main goal, we made registration retroactive.

We began requiring sex offenders to register in September 1991. In the last legislative session, we established registration requirements retroactively back to 1970. If you are still in the Texas criminal justice system — and that means paroled, probated or incarcerated — you must be a registered sex offender in our registered sex offender database. Under our new law, failure to register or to keep registration information current is a fourth-degree felony punishable by up to 2 years in jail. Registry information is public information accessible to any person upon written request.

— Community safeguards

We had our hardest fight in the area of community safeguards. Our public notification system was the most significant and controversial measure. With a watchful eye on the rest of the country, we tried to avoid the problems other States experienced in this sensitive area.

We tried to benefit from what the courts told other States. The courts seemed to indicate that a

notification statute must carefully balance the State's interest, which is the public's right to know, against the offender's 14th Amendment liberty interests. Under Ashley's Laws, we publish information about a sex offender in the newspaper if the victim was age 17 or younger. We do not publish information if the offender is a juvenile. If incest is the crime committed, we do not publish a notice, regardless of the victim's age.

Once a citizen sees a published notice about a sex offender, he or she is free to contact local law enforcement for additional information. It is very important to remember there is a specific reason for notification. It is not to foster a vigilante atmosphere. It is to warn parents that they should be aware of someone who lives nearby. Remind the public of this. Providing the offender's exact street address may not be necessary, in my opinion. Listing the street where he lives is often good enough, and it is certainly more likely to survive a court challenge.

— Victims' access

The last community safeguard I want to discuss is the necessary function of giving victims direct access to the system. The laws must respect the victim's position and role in this area. Notify the victim and the victim's family of the assailant's release. Allow victims to appear at parole hearings if they choose to. Do not tolerate an offender's attempts to contact his victim.

This is a battle of rights. Whose rights are more important in this situation? You must tip the scales in favor of victims and law-abiding citizens. You must remove the sex offender's best friend — his secrecy. Your laws must say loud and clear that children are important to us. If you chose to

harm one, we now have special laws to punish you and to keep track of you. These are the highlights of Ashley's Laws. I am sure we will make many more changes in the never-ending process to improve public policy for our State.

I came into this issue as a novice. I have learned a lot in the last 4 years. There is so much to learn. We can learn from each other and from every justice professional who deals with this issue. Hopefully, if States work together, we will not have to keep reinventing the wheel.

I encourage each expert in this critical field to help States craft model comprehensive statutes. I think one of the most important functions of these conferences is to come to conclusions, as difficult as they may be, and to help put some sound and tested ideas into action. Someone once said, "An ounce of action is worth a ton of theory."

The future

What does the future hold for States in the area of sex offenders and public policy? I think there are three emerging areas on the horizon. I would like to briefly mention them.

The first is technology. Technological advances will continue to unfold. States will be more progressive in using existing technology, telecommunications and global satellite positioning to alleviate ever-increasing sex offender supervision caseloads. Technology will also benefit treatment through plethysmographs,¹ polygraphs or DNA testing.

Second, I believe you will see a plethora of civil commitment

¹ An instrument that measures variations in the size of an organ or body part on the basis of the amount of blood passing through or present in the part.

statutes across the country in light of the U.S. Supreme Court ruling on the civil commitment statutes.

The third area is juvenile sex offenders. I am extremely concerned about them. I believe we can make our smartest investment in reducing certain sex offenses if we focus attention on this area. While the literature is becoming substantial in this field, very few States have truly focused on juvenile sex offenders.

As someone at a Washington, D.C. conference said last fall, "It's true that not all juvenile sex offenders will become adult sex offenders, but many, many adult sex offenders began as juveniles." If we are fortunate enough to assess and identify a juvenile sex offender at an early age, we could do so much to prevent him from a life of offending, and we could spare thousands of needless victims.

In closing, I want to reiterate three points I discussed:

1. We need to overhaul our entire criminal justice system to better control sex offenders;
2. We must never forget we are doing this to protect the public; and
3. We must remember that any changes made to the system must be comprehensive, sweeping and constitutional.

The States cannot wait. As each of you leaves this conference, I hope you do not forget the big picture when you return to your specific fields of expertise.

Nothing stays in my mind more vividly and helps me to move forward on this issue than a plaque that sits in front of Mitchell Elementary School in Plano. The plaque reads, "In loving memory of Ashley Nicole Estelle. Dedicated to all children and their right to play in safety."

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Panel of the states: Community notification and verification practices

The State of Washington study of the efficacy of notification laws
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The State of Washington study of the efficacy of notification laws

ROXANNE LIEB

Director

Washington State Institute of Public Policy

I tend to have schizophrenic feelings when I participate in events like this. I am horrified by many of the stories we hear about terrible crimes. Simultaneously, I feel a sense of energy and commitment when I see all the important progress that has been made regarding policies for sex offenses. I began to confront these issues in the 1970s, when I started volunteering on a rape crisis line. If someone told me back then that, by 1997, a talented group of professionals from all over the country would be assembled to discuss improvements in sex offender registration and notification programs, I am not sure I would have believed it. I feel quite privileged to be in your midst.

The research conducted by the Washington State Institute of Public Policy on registration and community notification statutes depends entirely on the people we contact from the States, who respond to our surveys. We are very appreciative of these contributions. We are about to release an updated version of our "Megan's Law" survey with information on 46 States.¹

We are also conducting a public opinion survey you might find interesting. We are placing random telephone calls to adults in the State of Washington asking questions

about their experiences with notification and soliciting their opinions about it. The results of that survey will be available soon.²

I have been asked to discuss the research that the Institute has conducted on community notification issues. I was asked to cover this topic because our research is the only notification research currently available. I would encourage other organizations to conduct similar research.

I receive telephone calls all the time from reporters who ask, "Is community notification a good law? Is it effective? Is it working?"

They want short answers, of course, and I keep annoying them because these questions cannot be answered with simple responses. In fact, some reporters start asking questions about registration and it turns out they really want to know about notification. "Do you want to know about registration or notification?" I ask them. "You bureaucrats are all alike," one responded. "You always try to complicate things." There are significant differences between registration and notification, of course, and there are also keen differences in their intended effects.

Our research covers the first 3 years of notification in our State. The most ideal research on the effects of notification or any other new social policy would include a comparison group. Drug companies use comparison groups when

testing new medications — one group gets the test medicine and the other takes a placebo. If you have enough people in your sample, you iron out the differences that might occur by chance. It is difficult to use that process when determining the effects of a new law. We had to search for an adequate comparison group; in this case, a similar group of sex offenders who were released without notification.

Study results

Our study covered approximately 125 offenders identified by law enforcement as posing high risk to the public. These were not what you might call "average sex offenders." They had extensive offending histories, and included several juveniles with histories of serious offenses.

The study compared recidivism rates of offenders who were released with and without notification. Let me stop here and ask you: What result would demonstrate the effectiveness of the law?

At first blush, most people say that learning that the notification group committed fewer sex offenses than the comparison group shows that the law was working. Some people, however, believe that a finding of a low recidivism rate proves that the police picked the wrong subjects for notification because they did not reoffend.

¹ The Study is available from the Washington State Institute of Public Policy, Seminar 3162, Mail Stop: TA-00, The Evergreen State College, Olympia, WA 98505. The study can also be accessed at www.wa.gov/wsipp.

² Ibid.

When we compared the study group to the comparison group, we found that they committed about the same number of new sex offenses. The only difference was the timing of rearrest. The community notification group was rearrested about twice as quickly as the comparison group. The average time in the community before rearrest was about 2 to 2-1/2 years for the notification group. It was closer to 5 years for the comparison group. Some people interpret the study results to reveal that the law failed because there was not much difference in the rate of new sex offenses. In my opinion, the fact that offenders were rearrested twice as quickly indicates that the law does have an effect. In ways we do not yet fully understand, the law is producing a different response from the offender, law enforcement and or the community, either in combination or alone.

The question that needs to be addressed in a study like this is subtler than, "How do recidivism rates for sex offenses compare?" We found that, in addition to looking at recidivism for sex offenses, it was just as important to look at recidivism for other offenses. We have consistently learned in our research on sex offenders that many of their new crimes are not sex offenses. In most instances, we care so much about sex crimes and focus only on sexual recidivism that we forget about the nonsexual crimes these offenders commit.

Next stage of research

The next stage of research should focus on the circumstances surrounding rearrest.

How many cases involved a tip from a community member that led law enforcement to the offender? In how many instances did rearrest occur because law enforcement was paying attention to the behaviors of identified offenders or using

notification as a tool for investigation?

The next phase should also focus on the nature of offending and the crimes committed. We tend to think about sex offenses as a huge category. There are a variety of sex offenses, and there is variety in terms of the seriousness of conduct. When we examined our two study groups, we found that people who were in the notification group may have been arrested for slightly less serious conduct, if one assumes the label of the crime reflects the actual behavior. The number of individuals on this question was so small that conclusions are not possible.

Ideally, the next research projects will also examine the circumstances surrounding rearrest, and the nature of the behavior.

I do not believe that Washington's experience and research on community notification are necessarily relevant for other States. Registration and notification systems are different all over the country and so is the way people respond to them. A notification law in one community is very different from a notification law in another community.

Thinking ahead, we must also be aware that reactions to the law and its effectiveness may vary over time. People react differently when they hear about their 20th offender than they do when hear about their first. An ongoing evolution occurs in a community's understanding of how to respond to this information. An evolution will also occur with regard to the reaction by sex offenders to the law, including both those identified as high risk and those who are not so identified. Thus, one should not, in any way, consider this particular study as anything other than a beginning point in terms of our understanding how notification laws work and the impact they have on the sex offender population.

Community notification and verification practices in three States

SCOTT A. COOPER

Staff Attorney

National Criminal Justice Association

The National Criminal Justice Association recently submitted a draft report to the Bureau of Justice Assistance, U.S. Department of Justice.¹ The report describes how sex offender registration and notification laws work in four States: Alaska, Louisiana, New Jersey and Washington. These four States were chosen for the report because of the diversity of their notification laws.

I will discuss the Alaska, Louisiana and New Jersey laws to illustrate some of the issues that face law- and policymakers as they draft sex offender registration and notification laws. The laws in these three States are not intended to be models of perfect notification laws, and I certainly do not suggest that these laws are necessarily in compliance with the Wetterling Act.² However, I want to share what these States are doing so you can get a feel for the diversity of approaches they have taken. My discussion focuses primarily on notification laws, but I may touch on registration issues as well.

The Alaska law provides for passive notification; citizens must seek out registry information. Louisiana provides for active notification; sex offenders must notify the communities in which they live. New Jersey also provides

for active notification; its statute establishes stringent notification procedures that local jurisdictions are required to follow. Washington allows significant discretion to local jurisdictions when implementing their notification programs.

Alaska's law

Alaska's registration and notification statute became effective in 1994.³ The offender must register in person at a State trooper post or at the municipal police department in his area of residence. The registration form is submitted to the Alaska Department of Public Safety (DPS), which maintains the central sex offender registry.

Notification is passive. The public must request sex offender information in writing on a standardized form provided by the Alaska State Trooper Permits and Licensing Unit for a \$10 nonrefundable fee.

Sex offender information requests may be made about a particular registrant or about all registrants in a particular municipality, village, ZIP code or street. The Alaska statute protects the victim's identity from disclosure unless the information is contained in court documents or other documents available to the public. The offender may submit a written response to the DPS to correct or modify information in the central registry or to add an explanatory note. If a request to

change, correct, modify or add information is denied, the offender may appeal the denial to the DPS commissioner. If that appeal is denied, the offender may appeal the commissioner's decision to the court.

Offenders may not challenge the scope of notification, because notification is passive and interested citizens must seek out registry information. It is not disseminated to the public. The law also requires the DPS commissioner to notify a victim if his or her assailant escapes from custody, if he is furloughed into the community on an early release program, or if he leaves custody for any other reason. The commissioner must notify the victim of an offender's status change only if the victim requests such notice. As part of this notice, the commissioner must send the victim a photograph of the offender taken within 3 weeks of the offender's release if the victim specifically requests the photograph in writing.

Louisiana's law

Louisiana's notification statute was enacted in 1992, and revised in 1995.⁴ The State Bureau of Criminal Identification and Information maintains a central registry of sex offender information. Louisiana's notification law is unique because it requires offenders to conduct community notification themselves. In rural areas, an offender must

¹ National Criminal Justice Association, *Sex Offender Community Notification* (Washington, D.C.: NCJA, November 1997).

² The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. § 14071.

³ ALASKA STAT. § 18.65.087(a) (Michie 1996).

⁴ LA. REV. STAT. ANN. §§ 15:540 through 15:549 (West Supp. 1997).

reveal his residence location to at least one person in every residence or business within a one-mile radius of his residence. In urban or suburban areas, the offender must meet the same notification requirements within a three-block area. The offender must also notify the superintendent of the school district where he will reside. The superintendent notifies the principal of every school that he or she thinks should be notified of the offender's name, address and crime of conviction.

A minimum of 10 days before the offender's release from custody, the Louisiana Department of Public Safety and Corrections must send a written notice of release to the police chief of the municipality where the offender will reside and to the sheriff in the parish where the offender will reside, if practicable. Upon written request, a notice of the offender's release must be sent to the victim of the offender's conviction crime, to witnesses who testified against the offender, and to any person the prosecuting district attorney might specify in writing.

A registrant must also notify via mail all people living in the designated area of his presence. The designated area is a 1 mile radius in rural areas and three square blocks from the address where the offender will reside in urban and suburban areas. Within 30 days of establishing residency, he must also publish — at his own expense — a notice in an official journal informing the community of his presence. This notice must be published on two separate days. Meanwhile, Louisiana passed a law in June 1997 that expanded the scope of the publication requirement to go beyond the particular parish where the registrant resides.⁵

⁵ 1997 LA. SESS. LAW SERV. Act 134 (H.B. 174)(West).

Louisiana courts may order any other form of notice they deem appropriate, including, but not limited to, signs, handbills, bumper stickers and clothing labeled to identify the registrant as a sex offender. As far as I know, no judge has ordered any of these, but the law does allow judges to take these steps.

An offender may petition the court for relief from the duty to register and notify. The court must consider the nature of the sex offense and the registrant's criminal and noncriminal behavior before and after his conviction. The court may also consider other factors. The registrant must prove by clear and convincing evidence that notification will not serve the law's purpose to protect the community.

New Jersey's law

The New Jersey notification statute was enacted in 1994.⁶ The chief law enforcement officer in the municipality where the registrant resides must notify the community within 45 days after receiving notice that an offender will be released from jail or prison. The county prosecutor determines who is subject to what kind of notification, and what tier of notification is to be imposed upon the offender.

The New Jersey attorney general promulgated guidelines and procedures in 1996 to notify the community and also created the Registrant Risk Assessment Scale (RRAS) to help determine the risk of reoffense.⁷ Based upon certain criteria, the RRAS determines an offender's score, which indicates

⁶ N.J. REV. STAT. §§ 2C7-1 through 2C7-11 (West 1995 & Supp. 1996).

⁷ *Guidelines for Law Enforcement for Notification to Local Officials and/or the Community of the Entry of a Sex Offender into the Community* (June 1, 1996, on file with author).

the likelihood that he will commit another sex offense. The criteria include the following:

- Conditions of release or post-release supervision;
- Physical conditions that minimize the risk of reoffense, such as age or physical incapacitation;
- Criminal history factors;
- Psychological or psychiatric profiles;
- Response to treatment; and
- Recent behavior.

In New Jersey, each criterion is assigned a score from 0 to 3. Zero indicates a low risk of reoffense. One indicates a moderate risk of reoffense. The number 2 is not assigned. Three indicates a high risk of reoffense.

Some criteria are given more weight than others. Individual criterion scores are added to achieve a total score. An offender receiving a total weighted RRAS score between 0 and 36 is classified as Tier I. An offender receiving an RRAS score between 37 and 73 is classified as Tier II. An offender receiving a total RRAS score between 74 and 111 is classified as Tier III.

Every offender is categorized as at least a Tier I offender. For notification purposes, local law enforcement agencies that are likely to encounter a Tier I offender are notified of his presence in the community. If an offender is categorized as Tier II, he would receive the same notification as Tier I — local law enforcement agencies likely to encounter the offender would be notified of his presence — and certain community organizations would also be notified. Those organizations must register with the State in order to receive notification. Tier III offenders have the same notification requirements as Tier II, and the public is notified through means designed to reach each

person who is likely to encounter the offender.

The New Jersey guidelines require prosecutors to train, educate and notify community organizations. A State prosecutor meets with an organization the first time the organization receives notification that a sex offender is in the community. The prosecutor brings copies of flyers listing information about the offender. The prosecutor also explains the law, stresses the importance of confidentiality and warns of the consequences of vigilantism. After the initial meeting and notification, the prosecutor simply notifies the organization of subsequently released offenders by mail or telephone.

Legal challenges in New Jersey

I want to address some of the New Jersey case law which focuses on the implementation of the notification laws. Several New Jersey court decisions have clarified the scope of community notification and the safeguards that accompany notification. The most important New Jersey case is *Doe v. Poritz*.⁸ In *Doe*, a convicted sex offender whose identity was not

released challenged the notification law on several grounds:

- He claimed notification constituted double jeopardy, or multiple punishments for the same offense.
- He claimed that subjection to notification requirements constituted cruel and unusual punishment and that it invaded his privacy.
- He demanded equal protection under the law, claiming that the New Jersey notification law treated persons who were similarly situated differently.
- He argued for procedural due process, claiming that the law failed to provide an opportunity to be heard and notice of such hearing. This is one area that the New Jersey case law and subsequent guidelines addressed with procedural due process issues and hearings.

The New Jersey Supreme Court, the State's highest court, upheld the notification laws, but it interpreted the statutes and revised the attorney general's guidelines. For Tier II and Tier III notifications, it ruled that there would have to be the likelihood of an encounter to justify notice to organizations that requested notification. Notification determinations had to be made on a case-by-case basis with organizations that registered for notification with the State.

The same standard was applied to Tier III community notification. Individual determinations were required to decide whether organizations that requested notification would receive that notification. To qualify for notification, these organizations would have to be in charge of the care or supervision of women and children. That distinction was not made before the *Doe* ruling.

In addition, pursuant to the guidelines revised in June 1996,⁹ all public and private educational institutions, including licensed daycare centers and summer camps, were automatically added to the notification list without having to register. The guidelines also defined "likely to encounter" to mean close geographic proximity to a location the offender visits or can be presumed to visit. It does not necessarily mean his residence. Before notification, the prosecutor's office or local law enforcement was required to visit the offender's listed address to verify that the offender lived there.

The *Doe* ruling also addressed the offender's behavior in the community. It mandated that the offender's behavior in the community following incarceration be considered in all tier considerations, and that psychological or psychiatric profiles had to be made available, not only to increase an offender's risk assessment but also to decrease tier classification.

Finally, Tiers II and III offenders were granted access to judicial review of their tier classification. They were given notice of this right to review before the notification actually took place. If an offender was classified as Tier II or Tier III, the new guidelines required that the offender be supplied with a form before community notification took place. The offender indicated the basis for his disagreement with or objection to his tier classification on the form. He also indicated his need for assigned counsel or he was required to provide the name of counsel that had already been obtained.

The offender had the right to have an attorney present at his hearing. The offender also received a copy of his completed RRAS

⁸ *Doe v. Poritz*, 142 N.J. 1 (1995). On July 25, 1995, the New Jersey Supreme Court upheld the constitutionality of the registration and notification laws known as Megan's Law. The court's ruling set certain due process requirements that would need to be met to implement the law's community notification provisions. Implementation has taken a three-pronged approach: a trial-level hearing to consider offender challenges to notification requirements; expedited appellate review; and the formation of a committee to examine consistency in the treatment of offenders (Source: *The Judiciary Letter*, An Information Sheet on New Jersey Judiciary Programs produced by the Administrative Office of the Courts, October 1996.)

⁹ See Footnote 7.

along with a copy of the RRAS manual that explained how the score was determined. Before the actual hearing, a prehearing conference was held with a judge to discuss any pertinent issues that needed attention before the hearing. The judge was authorized to conduct the hearing immediately after the prenotification hearing.

Another New Jersey Supreme Court case also addressed notification decisions.¹⁰ The court ruled that risk assessment was a useful tool to determine an offender's tier classification, but that it should not be solely relied upon. Risk assessment was found not to be a scientific device. It was to be used to guide and assess an offender's risk of reoffense. The court also concluded that nonconviction evidence and reliable hearsay evidence may also be considered in determining an offender's tier classification. General rules of evidence would not apply at a tier classification hearing as they would in a regular trial.

The State Supreme Court also held that a convicted sex offender should be permitted to obtain an expert and to present expert testimony at a tier designation

hearing.¹¹ In this case, the court did not reclassify the offender, but just remanded the case to the lower court for a determination consistent with its decision. In another ruling, the court addressed the psychological and psychiatric factors that must be considered by the court.¹² In that case, the court actually reduced an offender's tier classification from Tier II to Tier I. It held that the defendant's tier classification would have to be reduced because psychological and psychiatric factors were not taken into account during his risk assessment, rendering his RRAS score unreliable.

¹¹ *In re Registrant G.B.*, 685 A.2d 1252 (N.J. 1996). G.B. pleaded guilty to one count of second-degree sexual assault and was sentenced to 5 years at an adult treatment center. Upon release and pursuant to the RRAS, he was classified as a Tier II offender. He sought judicial review of the classification and at an *in camera* judicial hearing, he sought to challenge the predictive value of the RRAS as applied to his circumstances. To support his claims, he sought to introduce evidence from three experts. The trial court ruled that expert testimony was unwarranted. G.B. appealed the trial court's decision. The appellate court concluded that G.B. should be permitted to present expert testimony to show that the variable factors in the scale calculations as they related to him should result in a lesser tier classification.

¹² *In re Registrant E.I.*, No A-3767-96T1, 1997 N.J. Super. LEXIS 218 (N.J. Super. Ct. App. Div. May 7, 1997). The state commenced proceedings to register E.I., a 21-year-old who pleaded guilty to endangering the welfare of a child, as a Tier II sexual offender under New Jersey's registration and notification law. The appellate division held that E.I.'s classification arising from his consensual sexual relations with a 15-year-old victim, involving no force, did not come within the "heartland" of cases which required notification.

Finally, in still another court decision — this one in appellate court — the court ruled that, to facilitate judicial view of the geographic scope of the community notification, the prosecutor must prepare a large-scale map of the county with a color-coded grid to identify low- to high-population density areas.¹³ The map had to be based upon census data, county planning board data, or information provided by local planning boards and law enforcement officials.

Prosecutors were required to locate a registrant's residence or workplace on the map and to apply whatever approved distance criteria was determined. Prosecutors were also required to provide the registrant with a list of registered community organizations that were notified of his presence and the basis for that notification, whether it was because the organizations cared for women and children or because they were within geographic proximity of the offender.

¹⁰ *In re Registrant C.A.*, 679 A.2d 1153 (N.J. 1996). Prior to his release from jail, C.A., a convicted sex offender subject to New Jersey's registration and notification laws, was notified that, pursuant to his RRAS score, he would be classified as a Tier III offender. He contended that his RRAS score was incorrect because he never used a weapon, he was acquainted with all of his victims, and he had only had two victims rather than three because the charge by the third victim was dismissed. The trial court affirmed the Tier III classification. The Supreme Court granted C.A.'s petition for certification to the appellate division.

¹³ *In re Registrant E.A.*, 667 A.2d 1077 (N.J. Super. Ct. App. Div. 1995). E.A. was an adult convicted of sex offenses against 12-, 13- and 14-year-old boys. His criminal conduct subjected him to New Jersey's registration and notification laws. He challenged the geographic scope of notification on grounds that it was arbitrarily conceived, void of expert input, and therefore contrary to the attorney general's guidelines. The court remanded the case to allow the prosecutor to present to the trial court proper proof consonant with its opinion.

Contributors' biographies

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Contributors' biographies

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Marlene Beckman serves as Special Counsel to the Assistant Attorney General for the Office of Justice Programs (OJP), U.S. Department of Justice (DOJ). Prior to joining OJP, Ms. Beckman spent 3 years as a DOJ trial attorney in the Criminal Division's Fraud Section.

Ms. Beckman is a 1985 graduate of Georgetown University Law Center. Before and during law school, Ms. Beckman worked in corrections and in the Civil Rights Division for the DOJ's Law Enforcement Assistance Administration. Ms. Beckman has also performed white-collar criminal defense work for two Washington, D.C., law firms.

Robert R. Belair

SEARCH General Counsel Robert R. Belair is a partner with the Washington, D.C., law firm of Mullenholz, Brimsek & Belair. Mr. Belair is also CEO of Privacy and Legislative Associates, a legal and policy consulting firm. Privacy and information law involving administrative, legislative and litigation activity are the principal emphases of Mr. Belair's practice. He provides counseling in all aspects of privacy and information law, including educational, criminal, juvenile, medical, employment, credit and financial records; telecommunications; defamation; criminal justice administration; constitutional law; and intellectual property, including software copyrights.

As SEARCH General Counsel, Mr. Belair contributes to SEARCH's privacy and security programs. He authored many studies in criminal justice information law and policy. Mr. Belair was actively involved in

revising SEARCH's standards for criminal history record information, Technical Report No. 13: *Standards for the Security and Privacy of Criminal History Record Information* (Third Edition).

Mr. Belair serves as consultant to numerous Federal agencies and commissions on information policy and law. He is former Deputy General Counsel and Acting Counsel for the Domestic Council Committee on the Right of Privacy, Office of the President.

Mr. Belair is a graduate of Kalamazoo College (Michigan) and Columbia University School of Law.

Kathy J. Canestrini

Kathy J. Canestrini is a Board Examiner for the New York State Board of Examiners of Sex Offenders. She previously served as a research specialist for the New York State Department of Correctional Services, where she conducted extensive research on sex offender profiles and recidivism patterns.

She also served as a research assistant at the Hindelang Criminal Justice Center in Albany, New York, and as a juvenile probation officer in Texas.

Ms. Canestrini holds a B.A. from East Texas State University and a Master's degree in Criminal Justice from the State University of New York at Albany.

Dr. Jan M. Chaiken

Dr. Jan M. Chaiken has directed the Bureau of Justice Statistics (BJS), U.S. Department of Justice, since September 1994.

Dr. Chaiken was a senior mathematician at the Rand Corporation in Santa Monica,

California, from 1972 to 1984. He served as a principal scientist in law and justice and directed the Federal Justice Statistics Program at Abt Associates, Inc. in Cambridge, Massachusetts, from 1984 until nominated for his present post by President Clinton in 1994. He was selected as an Abt Fellow.

Dr. Chaiken's research focuses on developing and applying methods to improve criminal justice operations. He co-authored the FBI "blueprint" for a new incident-based crime reporting system. He also designed a microcomputer software package used in police patrol cars in the United States and abroad. His most noteworthy accomplishments were carried out jointly with his wife, Dr. Marcia Chaiken, Director of Research at LINC in Alexandria, Virginia. The Chaikens together authored numerous book chapters, reports and articles on crime and criminals.

Dr. Chaiken provided recommendations to LINC for improving the sample of the National Institute of Justice's Drug Use Forecasting (DUF) program and for expanding uses of DUF statistics to develop State and local policy. He worked directly with such agencies as the California Department of Corrections, the Kings County (Brooklyn) District Attorney's Office, the Colorado Division of Criminal Justice, the Los Angeles Sheriff's Department, and the Massachusetts Committee on Criminal Justice. Dr. Chaiken taught mathematics and public policy analysis at Cornell, at the Massachusetts Institute of Technology, and at the University of California at Los Angeles. He holds a Ph.D. in Mathematics from the Massachusetts Institute of Technology.

Scott A. Cooper

Scott A. Cooper is a Staff Attorney with the National Criminal Justice Association, a Washington, D.C.-based nonprofit association that represents State and local governments on crime control and public safety issues. Mr. Cooper previously maintained a solo practice specializing in family and criminal law. He served as law clerk for the District of Columbia Public Defender Service; for the Honorable Stephen W. Herrick; for the Albany County (New York) Police Court; for the Prisoners Legal Services of New York; and for the Albany County (New York) Public Defender's Office.

Mr. Cooper holds a J.D. from Albany Law School and a B.S. from the State University of New York at Albany.

Floyd Epps

Floyd Epps is a Board Examiner for the New York State Board of Examiners of Sex Offenders. He previously served as a New York State parole officer from 1986 to 1996, specializing in sex offender supervision. He also served as a New York City probation officer, as a caseworker for the New York City Department of Special Services for Children, and as a New York elementary school teacher.

Mr. Epps holds a B.A. and a Master's degree in Sociology from Herbert H. Lehman College (New York).

Donna Feinberg

Donna Feinberg is an Attorney in the Office of General Counsel, Office of Justice Programs, U.S. Department of Justice (DOJ). She previously worked as a legislative assistant for a member of Congress; as a law clerk for a U.S. Claims Court (now Court of Federal Claims) judge; and as an attorney for the American Nurses'

Association, for the Legal Services Corporation, and for the DOJ.

Ms. Feinberg is a University of Texas graduate. She holds a J.D. from the University of Missouri and a Master of Laws degree from Georgetown University Law Center.

Ronald P. Hawley

Mr. Ronald P. Hawley has served as Assistant Director of the North Carolina State Bureau of Investigation's Division of Criminal Information since 1993. Mr. Hawley began his career with the Bureau in 1973. His early assignments included service as a Special Agent, as an Assistant District Supervisor and as a District Supervisor. Mr. Hawley also served a tour of duty with the Governor's Security.

Mr. Hawley is involved with several committees and working groups related to criminal justice information technology. He sits as Co-chair of the Criminal Justice Information Network (CJIN) Study Committee, and is a member of the Criminal Justice Information Services (CJIS) Southern Regional Working Group and the CJIS Ad Hoc Task Force on Security, Privacy and Policy Matters. Mr. Hawley serves as the governor-appointed member of SEARCH representing North Carolina. He sits on the SEARCH Board of Directors and serves as Chair of the SEARCH Law and Policy Program Advisory Committee. Mr. Hawley currently chairs the SEARCH/Bureau of Justice Statistics' National Working Group on the National Instant Criminal Background Check System.

Mr. Hawley graduated from Campbell College (North Carolina). He also holds a Master's degree in Education from the University of Maine.

Honorable Mike Lawlor

Rep. Mike Lawlor is a six-term member of the Connecticut House of Representatives serving the 99th District, which comprises East Haven and the Short Beach area of Branford. Rep. Lawlor has been recognized in the Legislature for his work to reform Connecticut's criminal justice system, including alternative forms of punishment, drug policy, juvenile justice reform, victims' rights and sexual offender registration. He also pushed for the reform of economic development and job training programs to promote high-wage jobs. In 1993 and 1994, Rep. Lawlor led the fight for gun control in Connecticut.

Rep. Lawlor attended the University of Connecticut, where he was President of the Young Democrats. He graduated in 1979 with honors in Slavic and Eastern European Studies. He received a Master's Degree in Soviet-area studies from the University of London in 1981. He graduated in 1983 from the National Law Center at George Washington University in Washington, D.C.

Following graduation from law school, Rep. Lawlor was appointed a prosecutor with the State's Attorney's Office in New Haven. He resigned in 1986 to run for the Legislature. He continues to practice law and is now the General Counsel for Giordano Associates, a consumer advocate public adjustment firm. He teaches criminal law at the University of New Haven as a Practitioner in Residence.

Rep. Lawlor chairs the Eastern Regional Conference Criminal Justice Board of Directors and also the Corrections Task Force for the Council of State Governments. In the Legislature, Rep. Lawlor chairs the Judiciary Committee and sits on the Appropriations Committee. He served as the Chairman of the Labor and Public Employees Committee from 1993 to 1994.

Roxanne Lieb

Roxanne Lieb directs the Washington State Institute of Public Policy, a nonpartisan think tank funded by the Washington State Legislature. The Institute provides policymakers with information on issues of long-term significance to the State. It has conducted research since 1990 on State programs and policies regarding sex offenders and victims. Ms. Lieb's organization also summarized the Nation's laws regarding sex offender registration and community notification.

Ms. Lieb's prior experience includes service as Director of the State of Washington's Sentencing Guidelines Commission, where she helped set sentencing policy for adult felons.

She holds a Master's degree in Public Policy from the University of Washington. Ms. Lieb attended the Program for Senior Executives in State and Local Government at Harvard University's John F. Kennedy School of Government.

Kirk Lonbom

Kirk Lonbom has more than 17 years experience in municipal- and State-level law enforcement. Mr. Lonbom's service includes patrol and investigative assignments, including 3 years in an undercover capacity.

He joined the Illinois State Police in 1990 and was assigned to a field intelligence unit. In 1993, Mr. Lonbom was promoted to Section Chief in the Intelligence Bureau, where he was responsible for various intelligence programs.

He was promoted to his current position as Assistant Bureau Chief of the Intelligence Bureau in 1995. He is responsible for the operations of the Strategic Intelligence Group, which includes the Illinois Sex Offender Registration Program, the Violent Crimes Section and the

Organized Crime and Narcotics Intelligence Section.

Honorable Norm Maleng

The Honorable Norm Maleng has served as King County (Washington) Prosecuting Attorney since 1979. Mr. Maleng initiated many criminal justice system reforms at the local, State and national levels and he established a number of innovative programs within the Prosecuting Attorney's Office. They include a nationally recognized sexual assault prosecution unit; a victim assistance unit; Kids' Court (which helps child sex abuse victims understand the courtroom); and Drug Court, which offers first-time offenders the opportunity to attend a strict drug treatment program.

Mr. Maleng has been a Washington State leader in the reform of the State's criminal justice system. His innovations include crime victim compensation; the Sentencing Reform Act; the Community Protection Act (which includes the first sexually violent predator law in the Nation); the "Becca Bill," designed to help parents reach out to their runaway children; and, most recently, juvenile justice reform.

The King County Prosecutor's Office is one of the Nation's largest, with a staff of 465 employees, including more than 215 deputy prosecutors.

Mr. Maleng graduated from the University of Washington in 1960 with an Economics degree. He obtained a degree from the University of Washington School of Law, where he served as editor in chief of the law review. After graduation in 1966, he was selected to serve as staff attorney for the U.S. Senate Committee on Commerce. Mr. Maleng also served as a Lieutenant in the U.S. Army.

Mr. Maleng worked in private practice in Seattle for 3 years before being appointed Chief Deputy of the Civil Division.

Elizabeth A. Pearson

Elizabeth A. Pearson is a Staff Associate at the National Criminal Justice Association (NCJA), where she tracks congressional legislation that impacts States' criminal justice policies and appropriations. She also conducts research for NCJA grant projects.

Ms. Pearson was the primary researcher for projects sponsored by the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention and by the Office for Victims of Crime. She previously worked in the criminal justice program at the National Conference of State Legislatures in Colorado and for the Wisconsin State Senate.

Ms. Pearson holds a B.A. in Political Science from the University of Wisconsin-Madison. She also holds a Masters of Public Administration from the University of Colorado.

Emmet A. Rathbun

Emmet A. Rathbun began his FBI service in 1978 performing various supervisory duties for the Bureau's National Crime Information Center. Mr. Rathbun was assigned to the Criminal Justice Information Services Division (formerly Identification Division) in 1989. He currently serves as Unit Chief.

Mr. Rathbun began his law enforcement career in 1964 as a police officer. He became a special agent for the Iowa Bureau of Criminal Investigation in 1965. Mr. Rathbun rose to become that organization's Assistant Director before accepting a position with the FBI. He is a graduate of Upper Iowa University.

Dena T. Sacco

Dena T. Sacco is Counsel in the Office of Policy Development, U.S. Department of Justice (DOJ). Ms. Sacco is responsible for a variety of criminal justice policy matters, including implementation of sex offender registration and notification laws.

She was an employment law associate at the firm of Paul, Hastings, Janofsky & Walker, LLP prior to joining the DOJ. Ms. Sacco received a J.D. *cum laude* from Harvard Law School in 1993 and a B.A. *cum laude* from Yale University in 1990. She also received an LL.M in European Community Law from the College of Europe in 1994.

Honorable Florence Shapiro

Sen. Florence Shapiro is serving her third term in the Texas State Senate representing the State's 8th Senatorial District. She was elected Chair of the Senate Republican Caucus shortly after beginning her most recent term, becoming the first woman to hold the position and the first Republican to preside over the majority party caucus since Reconstruction. She also serves as Vice Chair of the Senate Criminal Justice and Nominations Committees, and as a member of the Intergovernmental Relations, Economic Development, State Affairs and the Select Tax Reform and Public School Finance committees.

Sen. Shapiro has earned numerous honors during her Senate tenure, including the 1993 Distinguished Legislative Service Award from the Texas Municipal League and the Legislator of the Year Award from the National Republican Legislators Association. She was chosen by the Council of State Governments as a 1993 Toll Fellow, an award given to only 35 officials

nationwide for their insight, innovation and commitment to State government.

Sen. Shapiro is recognized for her work in tort reform, economic development and criminal justice. Her most notable achievement was a series of bills known as Ashley's Laws, which changed the methods Texas utilized to punish sex offenders. Sen. Shapiro received the 1995 Child Advocate Award from the Dallas Children's Advocacy Center in recognition of her legislative efforts. She also received the 1995 Legislator of the Year Award from the Texas Municipal League and the Outstanding Legislator of the Year Award from the Texas Police Chiefs Association.

Sen. Shapiro is the former Mayor of Plano, Texas. She also served six terms on the Plano City Council. Sen. Shapiro has held numerous local, State and national leadership positions, including President of the Texas Municipal League, President of the Plano Economic Development Board and Vice Chair of the National League of Cities' Advisory Board.

She is a former English and speech teacher. She holds a Bachelor's degree in Secondary Education from the University of Texas at Austin.

Doug Smith

Doug Smith is Chief of the California Department of Justice's (DOJ) Bureau of Criminal Information and Analysis. Mr. Smith is responsible for the development, operation and maintenance of statewide criminal justice information system databases in such diverse areas as wanted persons, stolen vehicles and property, restraining orders, and subjects on supervised release status.

In addition, all California firearm sales are cleared through the Bureau,

which also handles gun dealer licensing and the issuance of special dangerous weapons licenses. The Bureau's criminal justice statistics center gathers and publishes statewide data. The Bureau's command center provides expedited information and serves as the California DOJ's emergency operations center.

As the agency responsible for sex offender registration and for maintaining the Violent Crime Information Network, the Bureau of Criminal Information and Analysis will direct the implementation of Megan's Law, the Jacob Wetterling Act and the Pam Lychner Act.

Prior to his current assignment, Mr. Smith managed day-to-day operations of the statewide crime laboratory system, which delivered forensic services throughout the State. He also managed the California Records and Identification Bureau. Mr. Smith has been extensively involved in the transformation of Bureau operations from a manual, paper-dependent system to the increasing use of electronic transport, processing and storage of data.

Lisa Gursky Sorkin

Lisa Gursky Sorkin is Chief of Staff of the U.S. Department of Justice's Office of Policy Development, which is responsible for defining and implementing a broad range of policy initiatives regarding crime, welfare reform and access to justice. Ms. Sorkin's responsibilities include a variety of criminal justice policy matters, including implementation of the Violence Against Women Act; sex offender registration and notification laws; and victims' rights.

Ms. Sorkin served from 1989 to 1992 as a telecommunications policy analyst for the Subcommittee on Telecommunications and Finance of the U.S. House of Representatives' Committee on

Energy and Commerce. From 1987 to 1989, she was a research analyst at Strategic Planning Associates, a Washington, D.C.-based management consultant firm.

Ms. Sorkin holds a B.A. with highest distinction from the University of Michigan and a J.D. from Yale Law School.

James C. Swain

James C. Swain directs the State and Local Assistance Division, Bureau of Justice Assistance (BJA), U.S. Department of Justice (DOJ). Mr. Swain formerly served as Director of the BJA's Discretionary Grant Division and of the Policy Development and Management Division. Prior to his BJA service, he served on a task force that wrote draft legislation and program structure that lead to the agency's creation in 1984.

Mr. Swain served as Director of the Courts Division in the Law Enforcement Assistance Administration and as a Center Chief at the National Institute of Justice, DOJ.

Mr. Swain is a graduate of the University of Illinois Law School.

Ralph C. Thomas

Ralph C. Thomas entered the FBI as a Special Agent in 1986. Mr. Thomas has served at the Bureau's Washington, D.C., headquarters since April 1996. He is currently assigned to the Policy, Planning and Analysis Unit (PPAU), Criminal Investigative Division, as a Supervisory Special Agent. PPAU is responsible for a wide variety of administrative and policy issues that directly impact FBI criminal investigations. Co-chairing the Bureau's Pam Lychner Sexual Offender Task Force is one of Mr. Thomas' supervisory responsibilities.

Mr. Thomas previously served in the FBI's San Antonio Division,

where he investigated a wide range of criminal violations. He also served in the Los Angeles Division, where he was assigned to the Los Angeles Joint Drug Intelligence Group, a multi-agency drug intelligence task force. As the squad's principal relief supervisor, Mr. Thomas assisted the supervisor in managing the High Intensity Drug Trafficking Area (HIDTA)-funded task force.

Mr. Thomas holds a B.A. in Political Science/Public Administration from Miami University (Ohio). He received his J.D. from the Ohio Northern University College of Law in 1985.

Donna M. Uzzell

Donna M. Uzzell was appointed Director of the Florida Department of Law Enforcement's (FDLE) Criminal Justice Information Services in November 1996 after serving as Special Agent in Charge of the Department's Investigative Support Bureau.

Information Services provides:

- Instant telecommunications for law enforcement throughout Florida;
- Information storage and retrieval in Florida and over the entire Nation;
- Criminal identification services;
- The ability to document and analyze criminal activity for the entire State;
- Statistical and crime-trend analysis;
- Criminal record inquiries for government, private and public requests;
- Improved system integrity through biennial terminal audits; and
- A statewide law enforcement training program.

Prior to her FDLE appointment, Ms. Uzzell spent 13 years with the Tallahassee Police Department, rising to the rank of sergeant.

She was elected to the Leon County (Florida) School Board in 1988. She served on the Board for 8 years, including two as Board chair, and focused on safe-school policies and procedures. She conducted crisis intervention, interagency collaboration and Serious Habitual Offender Comprehensive Action Program (SHOCAP) training and safe-school planning throughout the State. She currently teaches at Florida State University as an adjunct professor in the School of Criminology. She also serves as a consultant for Fox Valley Technical College in Wisconsin.

Ms. Uzzell is a certified crime prevention practitioner and former D.A.R.E. officer. Her contributions to child safety were recognized with a Law Enforcement Officer of the Year award and other honors. Ms. Uzzell served on several statewide task forces that considered school, child safety and juvenile justice issues. In 1993, she completed a 4-month special assignment with the Commissioner of Education to explore collaborative relationships between law enforcement and education. That same year, she spent 5 months on special assignment to the Florida Attorney General's Office to develop and implement the Florida Community Juvenile Justice Partnership Grant Program.

Ms. Uzzell currently serves as her State's representative to the SEARCH Membership Group.

Mike Welter

Mike Welter has served the Illinois State Police for 13 years, the last 3 as Chief of its Violent Crimes Section. The section oversees sex offender registration and community notification in Illinois. He served on two statewide task forces that studied domestic violence and sexually motivated crimes. Mr. Welter assisted in federally sponsored training

focusing on child abuse investigations and he published numerous articles on related topics.

He retired from the U.S. Army as a Lieutenant Colonel following a distinguished career that included combat tours in Vietnam and Iran. Mr. Welter holds three Masters' degrees with major fields of study in law, business administration and military science.

Patty Wetterling

Patty Wetterling is the mother of Jacob Wetterling, who was abducted October 22, 1989, near his home in St. Joseph, Minnesota. The former teacher — now a self-described "stay-at-home-mom" with four children — has become a respected national spokesperson on child safety issues.

Following the abduction of Jacob, Ms. Wetterling and her husband, Jerry, co-founded a not-for-profit foundation to educate parents and children to prevent the abduction, molestation and exploitation of children and to continue searching for Jacob and the thousands of other children reported missing each year.

As a Jacob Wetterling Foundation volunteer, Ms. Wetterling has appeared before hundreds of groups throughout the United States. She shares information about child molesters and their victims and offers specific safety information to children and parents. While she continues to speak frequently, she trains other volunteers to spread the Foundation's message.

In addition to working as a full-time volunteer for the Jacob Wetterling Foundation, Ms. Wetterling trains law enforcement on behalf of the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention. She serves on the Wetterling Foundation's Board of Directors and also on the Boards of Directors of

the National Center for Missing & Exploited Children (NCMEC); the Association of Missing and Exploited Children's Organizations (AMECO); and the Tri-County Crimestoppers Inc. Ms. Wetterling also serves as co-chair of the Millstream Arts Festival.

Ms. Wetterling has received numerous awards for her leadership in child advocacy. Her legislative accomplishments include the Jacob Wetterling Crimes Against Children Registration Act on the State level. The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was enacted on the Federal level as part of President Clinton's 1994 Crime Bill. Ms. Wetterling's message of Jacob's hope has resounded nationwide as a call to action and hope for missing children everywhere.

Appendix



U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Office of the Director

Washington, D.C. 20531

June 18, 1997

Dear

In follow up to my January 31, 1997, letter providing information regarding the compliance review process for State submissions of their sex offender registration and notification programs under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act ("the Wetterling Act"), 42 U.S.C. § 14071, this letter provides instructions for States that intend to submit requests for an extension of the September 13, 1997, compliance deadline, i.e., States that are not now able to submit to us a sex offender registration and notification program in complete compliance with the Wetterling Act and Megan's Law.

You will recall that under the Wetterling Act, as amended by Megan's Law, States must adopt sex offender registration and notification systems meeting specified minimum standards. This may be accomplished by legislation, regulation, or administrative policy. States which fail to implement a registration and notification program consistent with the Wetterling Act by the September 13, 1997, deadline -- three years from the September 13, 1994, enactment date -- will not receive 10 percent of their Byrne formula grant funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3765). However, as you know, the Wetterling Act contains a provision allowing States that show "good faith efforts" to comply with the Wetterling Act by the statutory deadline to be granted a two-year extension of time to continue their efforts to establish a compliant program.

In order to ensure that any State requesting an extension receives its full Byrne funding allocation, it should submit to BJA for review (1) its most recent proposed or enacted registration and notification program, and (2) a letter requesting that the State be granted a two-year extension of the statutory deadline, explaining its "good faith efforts" -- both past steps taken and future plans -- to implement the Wetterling Act and Megan's Law. The letter should describe the

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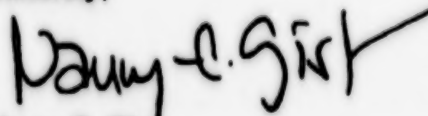
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specific "good faith efforts" the State has made to come into compliance, including an explanation of the concrete steps taken and the progress made, since the passage of the Wetterling Act in September 1994, toward the goal of establishing a registration and notification program in complete compliance with the Wetterling Act and Megan's Law. The State should also explain the reasons why it has not been able to establish a compliant program by the statutory deadline. In addition, the State should describe in detail its plan to establish a compliant program prior to or by the end of the extension period and submit a timetable, specifying the anticipated time frame within which each step of its overall plan will be taken.

We request that States make their submissions to BJA by July 13, 1997. State requests for an extension of time based on their "good faith efforts" will be reviewed and granted on a case-by-case basis.

Finally, if you have any questions regarding the processing of your State's submission of its registration and notification program for compliance review under the Wetterling Act and Megan's Law, or if you would like other assistance, please contact Jim Swain, Director, State and Local Assistance Division, or Omar Mohammed at (202) 514-6638.

Sincerely,



Nancy E. Gist
Director

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Bureau of Justice Statistics reports

(Revised April 1998)

Call toll-free 1-800-732-3277 to order BJS reports, to be added to the mailing list, or to speak to a reference specialist in statistics at the Bureau of Justice Statistics Clearinghouse, Box 179, Annapolis Junction, MD 20701-0179; or fax orders to 1-410-792-4358. To view or download the latest electronic publications (titles followed by K are available) go to the BJS Internet World Wide Web page (<http://www.ojp.usdoj.gov/bjs/>). For drugs and crime data, use the Internet (www.whitehousedrugpolicy.gov) or call toll-free 1-800-855-3332, the Drug Policy Information Clearinghouse of the White House Office of National Drug Control Policy, Box 6000, Rockville MD 20850.

Single copies of reports are free; use title and NCJ number to order. Postage and handling are charged for bulk orders of single reports. For single copies of multiple titles, up to 5 titles are free; 6-10, \$10; 11-15, \$15; 16-20, \$20; over 20, call for estimate. Libraries call for special rates.

BJS data sets and documentation are available on the Internet (<http://www.icpsr.umich.edu/NACJD/home.html>). Public-use tapes, disks, and CD-ROM's are available from the National Archive of Criminal Justice Data/ICPSR, P.O. Box 1248, Ann Arbor, MI 48106 (toll-free 1-800-999-0960; local 1-734-763-5011).

BJS overview reports

BJS fiscal year 98: At a glance, NCJ 169285, 4/98, 56p K

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Domestic violence statistics information package, NCJ 167883, 3/98, \$29 U.S., \$31 Canada and other countries

Sourcebook of criminal justice statistics 1996, NCJ 165361, 10/97, 667p, postage & handling \$6 US, \$11 Canada, \$30 other countries K

CD-ROM: Sourcebook of criminal justice statistics, 1994-95 editions, NCJ 164253, 10/97, postage/handling \$11.50, \$15 Canada and other countries

Press release handgun checks, 1996: A national estimate, NCJ-165704, 9/97, 6p K

BJS publications catalog, 1997, NCJ 164395, 7/97, 30p K

Sex offenses and offenders, NCJ 163392, 2/97, 39p K

Firearms, crime, and criminal justice: Guns and crime statistics information package, NCJ 161170, 1/97, \$24

Firearm injuries from crime, NCJ 160093, 4/96, 7p K

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Future directions for the National Archive of Criminal Justice Data: Report of the Task Force, NCJ 154875, 8/95, 15p K

Performance measures for the criminal justice system, NCJ 143505, 10/93, 16p K

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Report to the Nation on crime and justice: Second edition, NCJ 105506, 6/88, 134p

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Homicide statistics information package, NCJ 148462, 4/95, 240p, \$23

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Victimization and fear of crime: World perspectives, NCJ 93872, 1/85, 102p, \$9.15

Drugs and crime

State drug resources: 1997 national directory (<http://www.whitehousedrugpolicy.gov/drugfact/states/states.html>) K

Drugs, crime, and the justice system: A national report, NCJ 133652, 5/93, 224p

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Data for individual agencies with 100 or more officers, 1993, NCJ 148825, 9/95, 296p K

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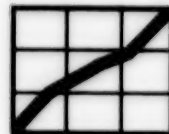
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